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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS
Evidentiary Hearing
February 23, 2015
Jefferson City, Missouri
Volume 14

In the Matter of Union)
Electric Company d/b/a)
Ameren Missouri's Tariff) File No. ER-2014-0258
to Increase Its Revenues)
for Electric Service)

MORRIS L. WOODRUFF, Presiding,
CHIEF REGULATORY LAW JUDGE.

ROBERT S. KENNEY, Chairman
STEPHEN M. STOLL,
DANIEL Y. HALL,
COMMISSIONERS.

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1 P R O C E E D I N G S

2 (WHEREUPON, the hearing began at
3 8:30 a.m.)

4 (STAFF EXHIBIT NOS. 200-241, DOE
5 EXHIBIT NOS. 700-709 AND CITIES OF BALLWIN AND
6 O'FALLON EXHIBIT NOS. 850-853 WERE MARKED FOR
7 IDENTIFICATION.)

8 JUDGE WOODRUFF: Welcome to the first
9 day of hearing for the first day of the Ameren rate
10 case, ER-2014-0258. We'll go ahead and get started
11 here. First thing we're going to do is take
12 entries of appearance, and then we'll deal with
13 some preliminary matters before we get started.

14 So for entries of appearance, we'll
15 begin with Ameren Missouri.

16 MS. TATRO: Good morning. Wendy
17 Tatro and Matthew Tomc, 1901 Chouteau Avenue,
18 St. Louis, Missouri.

19 MR. LOWERY: Good morning, your
20 Honor. Jim Lowery and Sarah Giboney, the law firm
21 of Smith Lewis, LLP, 111 South 9th Street,
22 Suite 200, Columbia, Missouri, also for Union
23 Electric Company, d/b/a Ameren Missouri.

24 JUDGE WOODRUFF: And for Staff.

25 MR. THOMPSON: Thank you, Judge.

1 Kevin Thompson, Alex Antal, Jeff Keevil, John
2 Borgmeyer, Marcie Mueth, Nathan Williams, Whitney
3 Payne, Cully Dale for the Staff of the Missouri
4 Public Service Commission. Also appearing will be
5 Jamie Meyers, a Rule 13 certified law student. Our
6 address has been provided to the court reporter.
7 Thank you.

8 JUDGE WOODRUFF: Thank you. Office
9 of the Public Counsel.

10 MR. ALLISON: Thank you, sir. Dustin
11 Allison, Christina Baker, Marc Poston and Timothy
12 Opitz for the Office of the Public Counsel,
13 200 Madison Street, Suite 650, Jefferson City,
14 Missouri.

15 JUDGE WOODRUFF: For Sierra Club.
16 Anyone here for Sierra Club?

17 (No response.)

18 JUDGE WOODRUFF: For Division of
19 Energy.

20 MR. KNEE: Yeah. For the Department
21 of Economic Development, Division of Energy, Jeremy
22 Knee, and the court reporter has my address.

23 JUDGE WOODRUFF: Thank you. For
24 MIEC/Noranda.

25 MR. DOWNEY: Edward Downey, Diana

1 Vuylsteke, Carole Iles, Ken Mallin. And the court
2 reporter has my address.

3 JUDGE WOODRUFF: For Wal-Mart, Sam'S
4 club.

5 (No response.)

6 JUDGE WOODRUFF: For the cities of
7 O'Fallon and Ballwin.

8 MR. CURTIS: Thank you, your Honor.
9 For the cities of O'Fallon and Ballwin, let the
10 record reflect the entry of appearance of Leland B.
11 Curtis, Carl Lumley and Edward Sluys of the firm of
12 Curtis, Heinz, Garrett & O'Keefe, 130 South
13 Bemiston, Suite 200, Clayton, Missouri 63150.

14 JUDGE WOODRUFF: For the Midwest
15 Energy Consumers Group.

16 MR. WOODSMALL: Thank you, your
17 Honor. David Woodsmall on behalf of MECG.

18 JUDGE WOODRUFF: Consumers Council.

19 MR. COFFMAN: On behalf of Consumers
20 Council of Missouri, John B. Coffman.

21 JUDGE WOODRUFF: For the Missouri
22 Retailers.

23 MS. BELL: On behalf of Missouri
24 Retailers Association, Stephanie Bell, Blitz,
25 Bardgett & Deutsch, and the court reporter has the

1 address.

2 JUDGE WOODRUFF: For the Electrical
3 Workers Union?

4 (No response.)

5 JUDGE WOODRUFF: United for Missouri.

6 MR. LINTON: Good morning, your
7 Honor. For United for Missouri, David Linton,
8 314 Romaine Spring View, Fenton, Missouri, 63026.
9 Thank you.

10 JUDGE WOODRUFF: Then we have three
11 other parties here who had not filed position
12 statements, but I'll see if there's anybody here.
13 NRDC, the Steelworkers Union and Renew Missouri. I
14 don't see any responses from them.

15 All right. A couple of things to
16 deal with before we get started. A number of
17 parties have filed requests to be excused from
18 portions of the hearing. I will grant all those
19 requests. Those requests specifically came from
20 Wal-Mart Stores and Sam's, the Electrical Workers
21 Union, United for Missouri and the Missouri
22 Retailers Association and the Sierra Club. So all
23 those requests are granted. The parties can come
24 and go as they wish.

25 I also wanted to indicate that in

1 past Ameren cases we've had a practice of doing
2 mini openings for each additional -- as each
3 additional issue comes up. We'll do that again
4 today. So if those parties who have been excused
5 wish to wait until their particular issue comes up,
6 they can do an opening at that point even if they
7 don't do a main opening at the beginning.

8 MR. KNEE: Your Honor, could I
9 interject?

10 JUDGE WOODRUFF: Sure.

11 MR. KNEE: The Division of Energy
12 didn't file a formal request to be excused prior to
13 the hearing, but just orally, we're in the same
14 situation. We're not going to have issues germane
15 to our interests. So I'd request to be excused as
16 well.

17 JUDGE WOODRUFF: That will also be
18 granted.

19 MR. CURTIS: Judge Woodruff,
20 similarly for the cities, we have limited issues on
21 the street lighting, and we would request to be
22 excused from the other portions of the hearing.

23 JUDGE WOODRUFF: That will also be
24 granted.

25 We have a motion that was filed on

1 Friday from the Consumers Council to declassify the
2 rebuttal testimony of James Dittmer. Any
3 objections to granting that motion?

4 MR. LOWERY: No objection.

5 JUDGE WOODRUFF: Hearing no
6 objections, that will also be granted.

7 MR. COFFMAN: Thank you, your Honor.
8 We will get that declassified version of the
9 testimony filed in EFIS today.

10 JUDGE WOODRUFF: Very good. I issued
11 a prehearing order assigning case numbers -- or
12 exhibit numbers to the prefiled testimony. I am
13 assuming everyone has seen that. So we will not
14 have to separately list testimony at the start of
15 this proceeding.

16 There was a couple of corrections to
17 the list that I made that were provided to me by
18 Cheryl Lobb. I believe she's from your office,
19 Mr. Lowery.

20 MR. LOWERY: Yes, she is.

21 JUDGE WOODRUFF: And I'll just go
22 through what she told me. Marla Langenhorst's
23 direct testimony is proprietary. Larry Loos'
24 direct testimony had HC and NP versions. Mark
25 Peters' direct testimony had HC and NP versions.

1 And Steve Wills filed amended rebuttal testimony.

2 So the amended testimony would be marked as

3 Exhibit 53.

4 If anybody else has any corrections
5 to what I put out, let me know and we'll make those
6 corrections also.

7 MR. LOWERY: Your Honor,
8 Ms. Langenhorst would also have an NP version,
9 proprietary and NP.

10 JUDGE WOODRUFF: Okay.

11 MR. KNEE: And Exhibit 707 will have
12 NP and HC versions.

13 JUDGE WOODRUFF: That was
14 Mr. Schroeder's direct?

15 MR. KNEE: Yes, your Honor.

16 JUDGE WOODRUFF: Okay.

17 MR. DOWNEY: Judge, Ed Downey for
18 MIEC.

19 JUDGE WOODRUFF: Yes, sir.

20 MR. DOWNEY: There were some
21 testimonies of Greg Meyer and Mike Brosch that
22 apparently were not listed. Oh, they weren't
23 designated. They were listed, but Mike Brosch's
24 should be NP and HC for 502, and Exhibit 513 as
25 well NP and HC for Greg Meyer.

1 JUDGE WOODRUFF: Which was --

2 MR. DOWNEY: All right. I'm sorry.

3 Let me correct something. Greg Meyer's testimony
4 was declassified, so we just have NP of that.

5 JUDGE WOODRUFF: Very good. Anything
6 else?

7 MR. DOWNEY: No.

8 JUDGE WOODRUFF: All right. Any
9 other matters anyone wants to bring up before we go
10 to opening statements?

11 MS. TATRO: I do. The parties have
12 reached a partial Stipulation & Agreement on
13 certain revenue requirement issues. It has not yet
14 been filed because we're still contacting all the
15 parties. Let me kind of walk through the issues
16 that we believe have been resolved.

17 JUDGE WOODRUFF: Very good.

18 MS. TATRO: All payroll and incentive
19 compensation issues.

20 JUDGE WOODRUFF: Which number would
21 that be?

22 MS. TATRO: Hang on.

23 JUDGE WOODRUFF: Incentive
24 compensation is 18.

25 MR. LOWERY: There's the payroll

1 issues, your Honor. Let me find those for you.

2 Well, that's actually under incentive compensation
3 as well, your Honor. It was subissue C. So 18 has
4 been resolved.

5 MS. TATRO: Dues and donations.

6 MR. LOWERY: That would have been on
7 the second day.

8 JUDGE WOODRUFF: It's No. 3.

9 MS. TATRO: Advertising, which was on
10 the first day, issue No. 2. Board of directors
11 compensation.

12 MR. LOWERY: That was No. 9, your
13 Honor.

14 MS. TATRO: No. 9. Uncollectibles.

15 MR. LOWERY: That was No. 10.

16 MS. TATRO: 10. Franchise tax. That
17 was under miscellaneous.

18 MR. LOWERY: Would be 15A, although I
19 believe all of 15 is resolved.

20 MS. TATRO: Lobbying and the DC
21 office expense.

22 JUDGE WOODRUFF: Is that also under
23 15? No. That's 17.

24 MR. LOWERY: Correct. That's 17.

25 MS. TATRO: Ameren Services Company

1 allocations.

2 MR. LOWERY: That's 27, your Honor.

3 MS. TATRO: Coal in transit, coal
4 inventory.

5 MR. LOWERY: All the coal issues,
6 No. 6, your Honor, have been resolved.

7 MS. TATRO: Coal refinement revenues
8 and expenses and then insurance expenses.

9 JUDGE WOODRUFF: Was that part of --

10 MR. LOWERY: I don't think insurance
11 expense was actually called out on the issues list.

12 MS. TATRO: Then, in addition to
13 that, rate case expense has been resolved.

14 JUDGE WOODRUFF: That's 14.

15 MS. TATRO: The issue of the damage
16 to the collector plates for the ESPs has been
17 resolved. Does not resolve the Labadie issue as
18 far as the Sierra Club is -- their issue, but it
19 resolves Staff's issue.

20 MR. LOWERY: It's 29B has been
21 resolved. 29A has not been.

22 MS. TATRO: It does not -- let's see.
23 Trackers that are resolved, and I think some of
24 them had already been resolved, so they perhaps
25 aren't issues on here, but the pension and OPEB

1 tracker, the RES tracker and the FEN 48 tracker.
2 The vegetation management and infrastructure
3 trackers are not resolved, so those will need to
4 continue. The storm tracker has not been resolved
5 except that the parties will have a base amount,
6 but that does not resolve that issue in its
7 entirety.

8 JUDGE WOODRUFF: Okay.

9 MS. TATRO: The only parties I have
10 not heard from on this matter are Wal-Mart and
11 Sam's, NRDC, Renew Missouri, the unions and
12 steelworkers. I don't have any reason to believe
13 that any of them will oppose it. I just haven't
14 had the opportunity to contact them. I will do
15 that today when we are done. Everyone else has
16 indicated they either will sign off or not oppose.

17 JUDGE WOODRUFF: Okay. Very good.
18 Then we'll need to discuss also what we'll do if
19 these issues presumably are not going to be heard,
20 what we're going to do with the schedule. Have the
21 parties decided that?

22 MR. LOWERY: I don't know that the
23 parties have decided it. I can give you certain
24 information. We will have to take income tax up
25 tomorrow because of witness travel and when people

1 are going to be here. We will have to take the
2 amortizations issues up on Wednesday for the same
3 reason. Mr. Rygh will have to be examined on
4 Friday. The fuel adjustment clause issue can't
5 move because of witness availability issues. I
6 think that would be true of the Noranda issues at
7 the end of the hearing as well.

8 And the only other one I can think of
9 that from our perspective that needs to for sure
10 stay where it is is the depreciation issue, again
11 because of witness issues in terms of when they can
12 and cannot be here. Otherwise, there is probably
13 flexibility if the parties desire and if it pleases
14 the Commission to move some things around or recess
15 if there were settlement discussions or something
16 of that nature.

17 JUDGE WOODRUFF: Well, there's more
18 flexibility rather than --

19 MS. TATRO: I think that's right.

20 MR. LOWERY: I don't think we're
21 going to have to be here 'til 9:30 like we were
22 last summer.

23 JUDGE WOODRUFF: How soon will we see
24 a written stipulation?

25 MS. TATRO: My intent is to file it

1 yet today.

2 JUDGE WOODRUFF: Very good. Okay.

3 Any other matters that need to be taken up before
4 we start with the opening statements? Go ahead.

5 CHAIRMAN KENNEY: Good morning,
6 everybody, and welcome. I wanted to ask a few
7 questions about the Nonunanimous Stipulation &
8 Agreement regarding Ameren's low-income
9 weatherization program, and whomever wants to
10 answer can answer those questions. And they
11 shouldn't be too terribly time consuming.

12 First of all, thank you to all the
13 parties who have spent substantial time coming to
14 agreement on certain issues, and we appreciate the
15 time and effort that that requires.

16 My questions about the low-income
17 weatherization program fall into a couple of
18 categories: First, the stakeholder advisory group,
19 the EMNV expenditures, and the extent to which
20 there's coordination between gas and electric
21 utilities. Let me start with the advisory group.
22 Who's participating in the advisory group?

23 MR. TOMC: Mr. Chairman, this is Matt
24 Tomc on behalf of the company. Let me try to
25 attempt to answer your question. With respect to

1 who's currently on the stakeholder advisory group,
2 it would be a diverse group of stakeholders that
3 are comprised of the company. Office of Public
4 Counsel has been engaged in that group. We also
5 have the Sierra Club. I believe NRDC has been
6 involved in that group as well. Division of Energy
7 would also be a stakeholder in that group. And it
8 does include others I'm sure I'm forgetting.

9 It is also not an exclusive group.
10 Individuals can join that stakeholder group. It's
11 a fairly open and transparent process to allow any
12 interested party to speak to the issues presented.

13 CHAIRMAN KENNEY: And how often do
14 they meet?

15 MR. TOMC: I know they meet at least
16 quarterly. I think that there are interim meetings
17 at times on special issues. And I don't know if
18 counsel for Public Counsel has any differing views
19 on that.

20 MR. ALLISON: Yeah, I think that's
21 right. I know they formally meet quarterly, and it
22 seems like on a weekly basis, frankly, particularly
23 when things are pressing, that folks are
24 interacting with each other perhaps more informally
25 via conference call or via e-mail.

1 CHAIRMAN KENNEY: Do we find that
2 that process and that advisory group is generally
3 helpful?

4 MR. TOMC: Yes.

5 CHAIRMAN KENNEY: It's an open-ended
6 question.

7 MR. TOMC: Yes, your Honor. I think
8 it's essential to the functioning of the energy
9 efficiency programs in the state, at least as I see
10 they're intended to function. They are designed to
11 be transparent, incorporate different views, and
12 also get feedback so the programs involved can be
13 improved as well as the general framework and the
14 discussion around how those programs are
15 established and the policies that they target,
16 those are discussed as well.

17 So I think, generally speaking, it is
18 a constructive group and it serves the interests of
19 energy efficiency in the state.

20 CHAIRMAN KENNEY: To what extent is
21 this advisory group duplicative or does it overlap
22 with the statewide collaborative that is
23 established under the MEEIA rules? Is this more or
24 less robust?

25 MR. TOMC: I guess I would ask --

1 answer that question by saying, I think there's
2 considerable overlap, first of all. I think that
3 the people that participate in those groups are
4 pretty much the same. I would think that the
5 stakeholder process for the specific -- specific to
6 Ameren Missouri's energy efficiency programs, my
7 opinion would be a little bit more robust in the
8 sense you're getting into a little more detailed
9 conversations, a little bit more specific issues
10 that actually impact the programs that customers
11 take advantage of as well as future direction of
12 where those programs are going to go.

13 Whereas, I see the collaborative
14 process with respect to the statewide -- statewide
15 group as being a higher policy level group that
16 really I think sets a course and in a sense is just
17 more general in scope.

18 CHAIRMAN KENNEY: Does anybody have
19 an opinion about whether it is efficient to have
20 both an Ameren-specific advisory group and a
21 statewide collaborative energy efficiency group?

22 MR. TOMC: My opinion is, your Honor,
23 if I may, that I -- I believe that it is efficient.
24 I think there are issues specific to the service
25 territory of Ameren Illinois. I think there are

1 specific programs at issue that should be discussed
2 and also the evaluation of those programs, the
3 policies surrounding those programs. There are
4 specific issues for Ameren Missouri that are not
5 shared in a statewide collaborative.

6 I think having both processes going
7 forward is advisable. I think there is probably an
8 interest in the statewide collaborative of not
9 bogging down that initiative with utility-specific
10 details.

11 CHAIRMAN KENNEY: All right. Moving
12 on to the EMNV expenditures. Just how were those
13 figures determined?

14 MR. TOMC: I'm not exactly sure. The
15 numbers that are included there are the product of
16 previous discussions and previous decisions in rate
17 proceedings.

18 So not being entirely clear, I
19 believe that it was presented to the Commission
20 last rate case, if I understand correctly, that a
21 certain portion of the overall allotment for
22 low-income weatherization programs would be
23 dedicated to EMNV activities, and the parties
24 decided upon a reasonable amount which is set forth
25 in that total.

1 CHAIRMAN KENNEY: And the EMNV
2 protocol or EMNV board, low-income weatherization,
3 is it separate and apart from the broader EMNV
4 contractor that evaluates all of the energy
5 efficiency programs?

6 MR. TOMC: Yes, it's entirely
7 separate.

8 CHAIRMAN KENNEY: It's a different
9 contractor and everything?

10 MR. TOMC: Yes. And looking at
11 Public Counsel, Public Counsel's agreeing with me.
12 It is a separate process. The EMNV with respect to
13 the MEEIA programs that Ameren Missouri is
14 implementing, those -- the function of the EMNV in
15 that context has other roles and purposes,
16 including determining ultimately what the
17 performance incentive awarded to a utility would
18 be.

19 Now, in both contexts the EMNV will
20 offer program improvements and suggestions to
21 achieve more efficient energy efficiency gains with
22 the dollars that are available, but the two
23 processes are separate.

24 CHAIRMAN KENNEY: Okay. And then
25 finally, paragraph 4 refers to the gas energy

1 efficiency advisory group, Ameren's and Laclede's.
2 Is that a separate advisory group, and to what
3 extent does that separate advisory group work
4 collaboratively with the stakeholder advisory group
5 for the broader MEEIA programs and the specific
6 Ameren Missouri low-income weatherization advisory
7 group? We've got a lot of advisory groups. To
8 what extent are they working collaboratively with
9 each other, among, in between each other?

10 MR. TOMC: Your Honor, I do believe
11 they are separate groups. I do need to take this
12 question back, I think, and talk to people that
13 actually participate in those groups and find more
14 detail. So subject to that, that check -- I have a
15 person that can answer the question with me.

16 CHAIRMAN KENNEY: And it looks like
17 Division of Energy may have something to add about
18 it and maybe Office of Public Counsel.

19 MS. TATRO: I was just going to say,
20 it's essentially the same groups. So while we
21 refer to them as separate groups, separate advisory
22 groups and they may have a separate meeting, it's
23 all the same parties. It's OPC and Staff. It's
24 the company. It's Division of Energy.

25 So to the extent that there are

1 multiple groups, I think there is coordination
2 because it's the same parties.

3 MR. KNEE: Yes. Chairman, so the
4 main difference would be the company party
5 obviously. But as we're talking, I'm thinking -- I
6 hate to put John Buchanan on the spot, but he's a
7 guy who's participated for a long in all these
8 groups, in particular the gas groups.

9 And so you're asking these questions
10 and I'm thinking John would be the guy to answer.
11 So if it's okay with you, I want to offer John a
12 chance to address that, the extent that they work
13 together and the extent they might overlap. Not
14 that you have to.

15 CHAIRMAN KENNEY: Mr. Buchanan,
16 you're with the Division of Energy?

17 MR. BUCHANAN: Good morning.

18 CHAIRMAN KENNEY: You're with the
19 Division of Energy?

20 MR. BUCHANAN: Yes, sir. My name is
21 John Buchanan. I'm with the Department of Economic
22 Development's division of energy, and I've worked
23 with the collaborative --

24 JUDGE WOODRUFF: We can swear him in.
25 We'll swear you in.

1 (Witness sworn.)

2 JUDGE WOODRUFF: Thank you.

3 MR. BUCHANAN: Again, my name is John
4 Buchanan, and I've worked with various
5 collaboratives since their formation several years
6 ago. Primarily I've been working with natural gas
7 companies in the state on their energy efficiency
8 programs, but lately I've been pulled back into the
9 electric side of the equation.

10 Insofar as the Division of Energy,
11 I'm one the principal point of contacts within the
12 agency working with Ameren, Laclede, as well as
13 members of the collaborative on the Ameren low-
14 income weatherization. I'll be happy to answer any
15 questions you might have.

16 CHAIRMAN KENNEY: My question really
17 is the extent to which all of these collaboratives
18 are working together to, I guess, achieve the most
19 efficiency outcomes. One of the reasons I'm
20 interested in this is because -- and this relates
21 to, I think, the implementation of the and to what
22 extent are gas and electric utilities working
23 collaboratively because efficiencies achieved on
24 the gas side could be credited had for purposes of
25 complying with 111D.

1 And then also to what extent are
2 you-all working with the water utilities to see
3 what types of efficiencies can be achieved on the
4 water sector that can also be credited for 111D
5 compliance.

6 So my question is really just,
7 generally speaking, how efficient are all of these
8 multiple collaborative functioning and are they
9 working collaboratively among and between
10 themselves?

11 MR. BUCHANAN: I believe the
12 collaborative process is working quite well.
13 Having worked with the collaboratives since, gosh,
14 early 1990s, there has been a great deal of
15 evolution, if you would, with the respect to the
16 issues that we've addressed.

17 But from a perspective of a
18 collaborative, the charter members to the
19 collaborative on the gas side, which ultimately, if
20 you would, shifted into the electric side, were
21 members of the Office of the Public Counsel, Staff
22 of course, the Division of Energy and each of the
23 respective utilities.

24 They are, in fact, separate, but due
25 to many of the issues that we're addressing today,

1 for example, the CMNV brought in Ameren natural gas
2 and also Laclede, and we've also been talking with
3 Liberty, which has a few households that are served
4 by Ameren Electric.

5 So to the issues that we address
6 specifically, I think it's a very, very
7 comprehensive and I think very transparent process.

8 CHAIRMAN KENNEY: And you think it's
9 efficient and beneficial to have multiple
10 collaboratives? That doesn't strike you as
11 inefficient and it's working appropriately

12 Mr. BUCHANAN: No, not at all. I
13 think due to the wealth and experience and
14 background information and so forth that each of
15 the parties have, coming into the collaborative,
16 there are occasions when we deal with specific
17 issues to a given utility, and that kind of depth
18 certainly helps that process.

19 CHAIRMAN KENNEY: I don't mean to
20 suggest that it is inefficient. I just wanted to
21 get the perspective of the participants whether
22 they believe that it was the most efficient.

23 MR. BUCHANAN: I believe so. Dr. --
24 Dr. Warren is here from Staff, if he'd like to join
25 me up here since we're putting one another on the

1 spot. Henry, do you want to come up and say
2 anything?

3 MR. WARREN: Good morning.

4 JUDGE WOODRUFF: Raise your right
5 hand.

6 (HENRY WARREN WAS SWORN IN.)

7 MR. WARREN: Am I up here to ask,
8 what specific question?

9 CHAIRMAN KENNEY: Do you think it's
10 working efficiently to have multiple
11 collaboratives? Statewide we have an energy
12 efficiency collaborative. It looks like each
13 utility has its own, the electric side and the gas
14 side has it's own collaboratives. Do you believe
15 that these multiple collaboratives are functioning
16 at their maximum efficiency?

17 MR. WARREN: I think it works pretty
18 well. It might be more in depth of a -- a more
19 in-depth issue just to talk about the maximum
20 efficiency, but the -- and I don't know -- I guess
21 I'll talk a little bit about the process where the
22 collaboratives came about, and they essentially
23 come about in individual rate cases.

24 And I think the original
25 collaborative that I can recall was to deal with

1 the low-income weatherization for Ameren gas, and
2 that included the parties that Mr. Buchanan
3 mentioned. And in a subsequent case back in the
4 '90s, the energy efficiency was expanded beyond
5 low-income weatherization to include rebase for
6 furnaces and I believe water heaters maybe, and
7 maybe even some building shell measures. And at
8 that time the Commission said, okay, we've got a
9 collaborative that deals with weatherization.
10 We'll just become the gas energy efficiency
11 collaborative.

12 CHAIRMAN KENNEY: Perfect. I don't
13 mean to get so far afield. Here's what I would
14 suggest and what I was really trying to get at is
15 that I think perhaps, not in the context of this
16 rate case, but it may be beneficial for us to just
17 do process analysis to ensure that the
18 collaboratives are functioning and to ensure that
19 we are including all the appropriate utilities. I
20 don't know the extent to which you've included the
21 water utilities and the efficiencies achieved on
22 the water side that would be credited for 111(D)
23 compliance.

24 I'm encouraged by the stipulation,
25 and I appreciate the parties' efforts. I just --

1 it's an issue that's of great importance to me
2 personally, but I think it's also just a
3 significant policy initiative. And as these
4 collaboratives continue to function, I want to make
5 sure that they're continuing to evolve and function
6 appropriately in capturing all the efficiencies
7 that we can possibly capture. I probably used the
8 word efficiency too much.

9 So thank you for answering questions.
10 I want to be respectful of all the parties' time,
11 though, as well.

12 JUDGE WOODRUFF: Thank you,
13 gentlemen.

14 CHAIRMAN KENNEY: Any other additions
15 to those comments?

16 MR. ALLISON: Mr. Chairman, the only
17 thing I would add is I think is, from OPC's
18 perspective, I think we've taken the position in
19 other cases where sometimes the utility is perhaps
20 not properly sized in the MEEIA context to have its
21 own energy efficiency program, I've heard some
22 because it would be inefficient for them to
23 administer some of those efforts.

24 And I think we certainly concur with
25 the sentiment, but to the extent that coextensive

1 utilities operating in different spaces can
2 collaborate with one another and join to offer a
3 portfolio of programming, they might be able to
4 derive efficiencies from that cooperative
5 arrangement that would otherwise be not indicated
6 because they would be otherwise inefficient if
7 operated on their own. So I think we share that
8 sentiment that this collaborative process, I think,
9 to the extent that it leads to greater efficiency
10 between utilities within the same service
11 territory, can be only to the benefit of those
12 efforts.

13 CHAIRMAN KENNEY: Thank you. So
14 those are my own questions on the low-income
15 weatherization stipulation. And I just want to
16 point out that we're appreciative of the parties'
17 efforts to settle all the other issues that you
18 identified. And if I heard Ms. Tatro correctly,
19 there's a stipulation expected to be filed today.

20 MR. LOWERY: Correct.

21 CHAIRMAN KENNEY: I think you can
22 probably anticipate that there will be questions
23 tomorrow then about the contents of that
24 stipulation as well.

25 I know we have these black box

1 settlements. And you-all have probably heard me
2 say this over the course of the last five years.
3 We appreciate settlements, but it also inhibits our
4 ability to drill down on specific issues of
5 interest to the Commission to ask questions about.
6 So we have to balance the desire to encourage
7 efficient administration of these cases against the
8 need to ask questions about the public interest.

9 And so I think tomorrow, after we
10 have an opportunity to review the questions, I
11 suspect some Commissioners are going to have
12 questions about particular issues, understanding
13 that there's this black box, but please come
14 prepared to answer questions about those things
15 tomorrow as well. Thanks.

16 JUDGE WOODRUFF: Okay. Let's go
17 ahead and begin with opening statements, then,
18 beginning with Ameren Missouri.

19 MR. LOWERY: Good morning. May it
20 please the Commission?

21 As you know, my name is Jim Lowery,
22 and I along with Wendy Tatro, Matt Tomc, Russ
23 Mitten and Sarah Giboney and also perhaps with the
24 help of another one of our colleagues or so
25 throughout the hearings represent Ameren Missouri

1 in this rate case.

2 The company was last in for a rate
3 case about two and a half years ago, and has now
4 found it necessary to seek an additional increase
5 in its rates. This rate increase request is driven
6 primarily by approximately \$1.7 billion of
7 investment that the company has placed in service
8 since the true-up cutoff date in its last rate
9 case.

10 Prior to this case, the company had
11 found it necessary to seek five other rate
12 increases since 2006. Those had occurred in
13 intervals about 18 months. So we've been able to
14 stay out about a year longer than on average we
15 were necessary to come back over those last several
16 years.

17 However, the investments that I
18 mentioned, all of which are in service and serving
19 customers today, and some other factors that I will
20 address in a moment have necessitated that the
21 company seek another adjustment in its rates to
22 reflect the return, the depreciation, property
23 taxes associated with those large investments and
24 to otherwise adjust its revenue requirement to a
25 level that will allow it to cover its costs and

1 otherwise continue to generate the extremely large
2 sums of cash that we need to continue those
3 substantial investments in our generation and
4 energy delivery infrastructure.

5 Now, while this is the sixth rate
6 case we've had in the last nine years, it's
7 important to keep those rate increases in
8 perspective. Even after one accounts for the rate
9 increase that we seek in this case, the company's
10 rates -- and Mr. Byrne's putting the chart up that
11 comes from Ameren Missouri president Michael
12 Moehn's direct testimony -- Ameren Missouri's rates
13 continue to compare very favorably, continue to be
14 significantly below the national and regional
15 averages, and they continue to be the lowest in the
16 state. And this is shown on this chart.

17 The fact that the -- the fact is that
18 the entire electric industry over the last decade
19 or so, as you're probably aware has found it
20 necessary to significantly raise their rates. This
21 has primarily been because of mandated capital
22 investments driven by environmental laws and
23 regulations, renewable energy standard mandates,
24 rising fuel costs.

25 All utilities I think have been --

1 have experienced the impact of lower energy prices
2 that we've seen over the last few years, which
3 lowers off-system sales. And we've also, in the
4 case of Ameren Missouri, made very significant
5 investments in energy efficiency, and we've seen
6 very slow, flat and even at times negative load
7 growth.

8 And we've seen all those things in
9 Missouri, and we've seen in Missouri that all of
10 the electric utilities, not just Ameren Missouri,
11 have essentially been in for a series of rate cases
12 over the last several years so that their rates can
13 be adjusted to account for these factors.

14 I mentioned a minute ago that we've
15 invested approximately \$1.7 billion in the last
16 couple of years in plant in service. So what are
17 those investments for? In summary, those
18 investments were for a myriad of transmission and
19 distribution and generation-related improvements
20 made for a variety of purposes, environment
21 compliance, to modernize the energy deliver and
22 generation systems, to drive reliability
23 improvements and to address ever-increasing
24 technology and cyber security needs.

25 I want to highlight some of the major

1 discrete investments that are involved in this
2 case. We've installed a new reactor vessel head at
3 the Callaway plant at a cost of approximately
4 \$150 million, and that was necessary to ensure the
5 continued safe and reliable operation of the
6 Callaway plant for at least the next 30 years.

7 We've installed two large new
8 substations in the St. Louis metropolitan area at a
9 total cost of about \$77 million, and those were
10 needed to enhance system reliability and to replace
11 aging substations. One of those is the central
12 substation that serves the Barnes-Jewish Hospital
13 complex and Washington University.

14 We've also installed new
15 electrostatic precipitators at the Labadie plant at
16 a cost of about \$183 million, which were
17 necessitated by federal and state Clean Air Act
18 regulations.

19 This case also allows Ameren Missouri
20 to recover the approximately \$90 million of solar
21 rebates that we were required to pay by the
22 Missouri RES statute that was -- that were paid
23 pursuant to a Commission-approved Stipulation &
24 Agreement that was entered into in 2014 among
25 several parties, including the Staff, MIEC and

1 representatives of the solar industry.

2 Other items that are materially
3 driving the need for a rate increase at this time
4 include increased depreciation expense, return and
5 taxes associated with that \$1.7 billion of
6 investments, and also an increase in depreciation
7 expense that's driven by the fact that we're going
8 to require the Meramec plant by 2022. In prior
9 cases the assumption for depreciation purposes had
10 been that it would be 2027, and the shortening of
11 that date increases depreciation expense with
12 respect to Meramec.

13 We are also rebasing the company's
14 net energy costs in this case which, despite the
15 company's efforts, have continued to rise, largely
16 because they are a reflection of natural and
17 international commodity markets that we simply have
18 no control over.

19 As I believe you're familiar with,
20 net energy costs are fuel and purchased power net
21 of off-system sales and associated transportation
22 charges. The rebase sums that are involved in this
23 case would have been recovered or almost nearly so
24 through the fuel adjustment cause had the case not
25 been filed, but as we have always done, and as

1 Staff and others agree that we should do, we always
2 rebase those when we have a rate case, which means
3 that more of those net energy costs will be
4 recovered through base rates and less through
5 future fuel adjustment clause adjustments.

6 Now, one area that is not driving the
7 need for a rate increase at this time is
8 non-energy-cost-related operations and maintenance
9 expenses, or O&M. This is because the company has
10 continued to work tirelessly to drive costs out of
11 its business whenever it can, and the company's
12 been able to achieve significant O&M savings since
13 the last rate case to the tune of \$67 million on an
14 annual basis.

15 So when we reset rates in this case,
16 those annual savings are going to be baked into the
17 rates to the benefit of customers.

18 The company's rate request at this
19 time is somewhat lower than it was when the case
20 was initially filed, and that's because, as is
21 pretty typical in these cases, we trued up the
22 major figures in this case for cost, revenues and
23 rate base through December 31, 2014.

24 So our current request is for just
25 over \$200 million. That's as compared to the

1 original request of \$264 million. The \$200 million
2 equates to about a 7.3 percent increase as compared
3 to the 9.7 we initially had requested.

4 A significant driver of that lower
5 request is the fact that Congress just in December
6 of last year extended so-called bonus depreciation,
7 and bonus depreciation then generates significant
8 accumulated deferred income taxes which off-- which
9 act as an offset to rate base and lower the revenue
10 requirement.

11 I wanted to point this out because I
12 wanted to be very clear that we haven't invested
13 less than we said we were going to or that we
14 expected to. We've invested as much, but as a
15 consequence of this tax law change, our rate base
16 for ratemaking purposes is lower than we expected
17 it to be. There's also been a few other material
18 cost reductions, but that tax change is a
19 significant driver.

20 Another driver of the lower overall
21 rate increase is a overall reduction in the
22 increase in net energy costs that we expected. We
23 had expected that to be 137 million when we filed
24 the case, and it turned out to be 103 million based
25 on the trued-up figures.

1 Among other reasons, the most
2 significant driver of that is that power prices
3 have finally begun to recover, and when that
4 happens, off-system sales revenues go up, and it
5 lowers net energy costs. And if that trend
6 continues, customers are going to get almost all of
7 that benefit through the fuel adjustment clause in
8 the future.

9 The approximately 7.3 percent
10 increase that we're seeking in this case is a bit
11 below the approximately 7.6 percent average
12 increase that you've approved in the last five
13 cases. And I want to point out that, as I
14 mentioned, we've been out longer this time.

15 So when you look at the -- if you
16 want to look at it as an annual increase since the
17 last case, probably be somewhere in the
18 neighborhood of 2 and a half to 3 percent is what
19 the increase would equate to on an annual basis.
20 In the past that's been higher because we've come
21 in more often.

22 Although it's perhaps a statement of
23 the obvious, the company recognizes that rate
24 increases are very unpopular. The truth is not a
25 single one of us, me included, like to pay more for

1 electric service or any other service. Utilities
2 would rather not file rate cases at all.

3 But if an electric utility like
4 Ameren Missouri is to continue to attract the huge
5 sums of capital it needs to build, maintain and
6 operate their vast delivery systems and generation,
7 if they're going to continue to provide the kind of
8 service that customers expect, they must have rates
9 in place that will allow them -- provide them the
10 revenues they need to cover their operating
11 expenses, their income tax, their depreciation and
12 their cost of capital.

13 Electric utilities like Ameren
14 Missouri have to show up for work every day. They
15 have an obligation to serve everybody in their
16 service territory consistent with their statutory
17 obligation to provide safe and adequate service.
18 And simple put, it takes a lot of money to do that,
19 and it sometimes necessitates rate cases like this
20 one.

21 So what has the company done with the
22 funds from those prior rate cases that you've seen
23 fit to provide it? Since 2007 the company has
24 invested about \$5.2 billion of plant in its
25 generation and energy delivery systems, including

1 1.1 billion in 2014 alone.

2 And what have those investments
3 produced? As shown on this chart that Mr. Byrne
4 just put up, which is also from Mr. Moehn's direct
5 testimony, the company's reliability has
6 significantly improved since 2007. The fact that
7 the bars are getting smaller over here towards me
8 is a good thing. Indeed, the company's reliability
9 is in the top quartile of all electric utilities in
10 the United States.

11 The company also continues to reduce
12 emissions from its power plants. We've had
13 significant reductions in sulfur dioxide emissions,
14 mercury emissions and in particulate matters.

15 The company's power plants continue
16 to perform well. The Labadie plant just won
17 Navigant's Generation Knowledge Service Plant
18 Operational Excellence Award for excellence in
19 operational management and the award for
20 performance and reliability for the period 2009 to
21 2013. The Callaway plant carries the Institute of
22 Nuclear Power Operations' highest possible rating
23 for its operations.

24 The company also continues to
25 increase the utilization of renewables as required

1 with the Missouri RES statute and continues to make
2 large investments in energy efficiency. And as
3 noted, it has made significant investments,
4 improved reliability, reduced pollution, maintained
5 its robust general system, and helped customers use
6 less energy, and all the while it has done so at
7 comparatively favorable rates.

8 It's also improved its safety
9 performance, which can be observed by this next
10 chart also from Mr. Moehn's direct testimony, which
11 shows that its reportable injuries, which is the
12 top green line, and its accidents that have
13 resulted in lost work days are both down
14 significantly over the last five or six years.

15 The bottom line is that the company's
16 been a very good steward of the funds that you've
17 provided through rate increases that you've
18 approved in the last few years. The company
19 provides an essential service to its customers who
20 expect an ever-increasing level of reliability for
21 all of the devices that we all depend on 24/7, and
22 the company's done so at reasonable and comparably
23 very favorable rates.

24 So what are the major issues in this
25 case? I'm going to highlight four or five of them.

1 First one is what is the appropriate return on
2 equity or cost of equity to include in rate -- to
3 use to set rates in this case? The second one is
4 what is the appropriate level of income tax expense
5 used to set rates? Third, should the approximately
6 \$90 million of solar rebates that we were required
7 to pay be included in rates through a three-year
8 amortization as was specifically contemplated by
9 the Commission-approved stipulation that was
10 entered into? Should other regulatory assets which
11 were also deferred with Commission approval be
12 included in rates through appropriate
13 amortizations? And finally, what level of
14 depreciation expense should we use to set rates?
15 Those are the five main revenue requirement related
16 issues.

17 There are also issues in the case
18 that don't directly affect revenue requirement, but
19 they are nonetheless quite important. Those
20 include continuation of the company's fuel
21 adjustment clause, which is a critically important
22 mechanism for managing the company's net energy
23 costs that is utilized by 98 percent of all
24 electric utilities in the U.S.

25 Continuation of the company's two-way

1 major storm cost tracker, which as the Commission
2 just recognized in the last case is a sensible, a
3 more sensible and rational way to deal with major
4 storm cost expenses to ensure the company recovers
5 all of those expenses, no more and no less.

6 Third, continuation of the company's
7 two-way vegetation management and infrastructure
8 inspection trackers, again, as a rational and
9 sensible way to make sure that those mandated
10 expenses are recovered but no more and no less.

11 And finally, should Noranda be
12 granted a huge rate subsidy that's paid for by all
13 of Ameren Missouri's other customers? We question,
14 we continue to question, as did the Commission in
15 the last case last year when Noranda essentially
16 made a similar request, whether the Commission
17 should be involved in this issue at all.

18 Indeed, a legitimate question one
19 must ask is whether, if Noranda has a need, whether
20 that need should be -- should or must be directed
21 to the Missouri General Assembly so that a policy
22 decision can be made about how the State should
23 address such a need and so that it can be paid for by
24 everyone in the state as opposed to just Ameren
25 Missouri's customers.

1 I'd like to now turn to a little bit
2 deeper description of three or four of the major
3 issues in the case.

4 As is almost always the case, return
5 on equity is the biggest issue from a dollar
6 perspective. As noted, a required return on equity
7 for a utility is simply a reflection of what its
8 cost of equity is. Put another way, a required
9 return reflects a fair return.

10 A fair return is one that is
11 commensurate with the returns on investments having
12 corresponding risk. It's a return that's
13 sufficient to ensure the company's financial
14 integrity, and it's a return that's adequate to
15 allow the company to receive the funds that it
16 needs so it can attract capital on reasonable terms
17 and continue to meet that service obligation I
18 talked about.

19 Not only must the return be set to
20 meet those standards, but the rate order as a whole
21 must be such that the company actually has a
22 reasonable opportunity to earn that return.

23 As earlier noted, Ameren Missouri
24 continues to make very significant capital
25 investments in its generation and energy delivery

1 systems. Capital markets are very competitive, and
2 it therefore follows that Ameren Missouri must
3 compete with other equity investments, including
4 other utilities, to attract that capital to make
5 those long-term investments.

6 This is made even more important by
7 the fact that in Missouri there are a couple of
8 tools that are not available to the Commission, and
9 that is you cannot allow CWIP in rate base and at
10 least to some extent cannot as a matter of law use
11 a forecasted test year.

12 Mr. Hevert's testimony and
13 recommendations respecting Ameren Missouri's
14 required return are based on the results of sound
15 financial models and reliance upon a diversity of
16 data to arrive at a fair and competent estimation
17 of Ameren Missouri's cost of equity at
18 10.4 percent.

19 The evidence in this case will show
20 that the other parties' recommendations, that being
21 Staff, MIEC and OPC, which are all tightly
22 clustered between 9.01 percent and 9.3 percent, are
23 far below the returns that investors would expect
24 from vertically integrated electric utilities
25 operating in other jurisdictions.

1 Now, why are their proposals so much
2 lower than the ROEs that we see approved for other
3 vertically integrated electric utilities? It's
4 because they are based on assumptions regarding
5 growth rates, regarding interest rate, valuation
6 levels and authorized returns that are simply not
7 supported by the observable data.

8 The evidence will also show that,
9 regardless of the various modeling, quote,
10 adjustments that they've made, these other parties'
11 ROE witnesses' results are unreasonable. Their
12 modeling produces implausibly low results, and
13 nowhere in any of their testimony have they
14 demonstrated a justification to lower the company's
15 current allowed ROE 50 to 80 basis points. In
16 fact, such a step would make the company's ROE
17 lower than what we see with natural gas
18 distribution utilities which carry far less risk.

19 The unreasonableness of these other
20 witnesses' recommendations is demonstrated by this
21 chart from Mr. Hevert's surrebuttal testimony. The
22 chart depicts actual allowed returns, the frequency
23 of those allowed returns for other vertically
24 integrated electric utilities for a period 2012 to
25 2014.

1 While it is true that Mr. Hevert's
2 recommendation is slightly above the mean and the
3 median, there are more than 20 observations with
4 which Mr. Hevert's recommendation is either below
5 or very much in line with, and most of the other
6 observations are far closer to Mr. Hevert's
7 recommendation than they are to the other
8 witnesses. In fact, there are but two observations
9 that fall within the range recommended by the other
10 witnesses in this case.

11 This next chart is a depiction of
12 authorized returns and treasury yields over the
13 last couple years, and as it shows, it's simply not
14 true that the dip in treasury yields that we've
15 seen means that the cost of equity has fallen,
16 which in particular Staff witness Mr. Murray
17 suggests. In fact, the authorized returns remain
18 clustered in the neighborhood of where they were
19 and what you awarded in the last case.

20 I encourage you to ask Mr. Hevert
21 about his recommendations, and I also encourage you
22 to ask him about the other parties' recommendations
23 and why they simply do not reflect Ameren
24 Missouri's cost of equity.

25 The next issue I'd like to talk about

1 is income tax expense. In this rate case there are
2 two income tax issues. Sometimes there are none
3 that go to hearing, but there's two here, but the
4 resolution of the first one will effectively
5 resolve the second one.

6 Those issues are first the proper
7 calculation of the impact of net operating losses,
8 or NOLs as I'm going to refer to them, on the
9 company's revenue requirement; and second, the
10 proper calculation of Internal Revenue Code
11 Section 199 deduction.

12 As to the first issue, NOLs, as
13 company witness James Warren's testimony explains,
14 Ameren Missouri is and has been for many years a
15 member of a consolidated taxpayer group with its
16 other affiliates. It's a consolidated taxpayer.
17 That's how it files its tax return. And once that
18 election is made as it was many years ago, it must
19 remain a consolidated taxpayer.

20 For a number of years, including
21 during periods covered by Ameren Missouri's last
22 three rate cases, Ameren Missouri customers has
23 been benefited significantly from a lower level of
24 rate base and hence a lower revenue requirement
25 because of that consolidated approach that it has

1 used and that it actually does use.

2 However, in this one case the
3 consolidated approach does produce a higher rate
4 base and a higher revenue requirement than a
5 standalone approach would produce. However, the
6 bottom line is that because of the treatment of
7 NOLs using a consolidated approach, over the last
8 three rate cases combined with this case, customers
9 cumulatively have benefited significantly from the
10 consolidated approach. And we don't expect the
11 impact of the consolidated approach over the long
12 term to go the other way, but in this particular
13 case it has.

14 Now, seizing opportunistically, we
15 believe, on the actual result of the consolidated
16 approach that has benefited customers for years,
17 MIEC now wants to have the best of both worlds.
18 MIEC witness Brosch, who has testified for MIEC on
19 income tax issues in the last several rate cases
20 and who was all too happy to accept the benefits of
21 a consolidated approach on this issue in those
22 cases, now argues that the reality of the company's
23 actual tax filings should be ignored in favor of
24 standalone calculation.

25 He attempts to draw an analogy

1 between this issue and the Commission's affiliate
2 transaction rules, arguing that the consolidated
3 approach in this case confers a financial advantage
4 on Ameren Missouri's affiliates to Ameren
5 Missouri's detriment, but that contention is simply
6 not true.

7 For one thing, the rules don't apply
8 at all. There is no transaction taking place
9 between Ameren Missouri and its affiliates insofar
10 as the calculation of taxes is concerned. Ameren
11 Missouri is not buying or selling goods to from an
12 affiliate.

13 Even more fundamentally, the purpose
14 of the affiliate transaction rules is to prevent
15 the Missouri regulated entity, Ameren Missouri,
16 from suffering a detriment by conferring a benefit
17 on its affiliates, which has not happened. The
18 consolidated taxpayer approach undoubtedly has
19 benefited Ameren Missouri, and Mr. Brosch's
20 opportunistic attempt to have it both ways should
21 be rejected.

22 On the second issue, the 199
23 deduction issue, although Mr. Brosch agrees that
24 the 199 deduction should take into account NOLs,
25 his primary position is that the 199 deduction

1 should be calculated in this case as it has been in
2 the last few cases where everybody improperly
3 failed to take the NOLs into account.

4 This reminds me a lot of the coal in
5 transit issue from the last case where Staff's
6 argument, one of their arguments was we haven't
7 been including coal in transit in rate base for the
8 last few cases, so you shouldn't include it now.
9 And the Commission very directly said in its Report
10 and Order, I'm paraphrasing of course, but said we
11 don't really care how we've done this in the past.
12 We want to get it right.

13 And the right answer is that you take
14 NOLs into account when you calculate the
15 Section 199 deduction. And if you do that,
16 Mr. Brosch agrees that's what you really should do
17 a methodological perspective, then Mr. Brosch
18 agrees that the company's calculation is correct.

19 I next want to touch on the solar
20 rebate issue. This is an issue, to put it bluntly,
21 that should not be an issue in this case at all.
22 In a clear attempted end run around the stipulation
23 that it signed and with which it was ordered to
24 comply by the Commission's order approving that
25 stipulation, MIEC has ginned up an argument in

1 opposition to Ameren Missouri's recovery of about
2 \$90 million in solar rebates it was required by law
3 to pay and that the parties and the Commission
4 contemplated it would recover.

5 The argument that they make? That
6 past per-book and unnormalized earnings above the
7 company's last ROE have, quote, already paid for,
8 end quote, the rebates. The argument is as bold as
9 it is wrong. As the Commission just recognized a
10 few months ago in the Noranda earnings complaint,
11 one cannot translate unadjusted per-book earnings
12 to regulated returns used to set rates or used to
13 judge whether those rates are just and reasonable.

14 And the law is clear. Customers do
15 not pay for a company's costs. The utility pays
16 the cost. The revenues that the utility receives
17 above the targeted ROE or below the targeted ROE,
18 and it's almost always going to be above or below,
19 belong to the utility. There is no ceiling on
20 earnings, nor is there a floor on earnings.

21 And this is evidence by -- MIEC
22 certainly wouldn't accept a floor, and we know that
23 because in past cases when there have been
24 regulatory liabilities that are to be amortized
25 back to customers, and in those cases when the

1 prior unadjusted per-book earnings were below the
2 company's authorized ROE, MIEC was all too happy to
3 accept those lower rates that those amortizations
4 provided.

5 Not only is MIEC acting
6 opportunistically on this issue as well, but it's
7 violating its obligations under the solar rebate
8 stipulation that it signed. MIEC agreed that the
9 only basis upon which it could oppose recovery of
10 the solar rebates was a claim that the company was
11 imprudent in paying them, and no one is making such
12 a claim here.

13 Now, MIEC is going to tell you that
14 it's not opposing recovery but that we've already
15 recovered them, and for the reasons I just gave,
16 that argument is just dead wrong. It's not true,
17 and it should be rejected.

18 Nor should the Consumers Council of
19 Missouri be allowed to advance the argument that
20 MIEC indeed explained and suggested to it. As we
21 will address in a filing to soon be made, MIEC is
22 simply seeking to do indirectly through CCM what it
23 can't do directly. The Commission should not
24 sanction this kind of behavior or it calls into
25 serious question the integrity of agreements

1 entered into by parties at the Commission and that
2 indeed are then approved by the Commission.

3 Substantively the arguments that is
4 being made here has been made three times in the
5 last 30 or 40 years before the Commission. That is
6 that you should look back retroactively and use
7 adjusted per-book earnings to prevent an
8 amortization of an authorized deferred sum. The
9 Commission has rejected that argument all three
10 times that it's been made. The Commission has
11 never done what MIEC is asking it to do in this
12 case.

13 And the evidence in this case will
14 show, if the Commission were to begin to take such
15 an approach, that one of the regulatory toolboxes
16 that it has had over the last many decades, that is
17 approving AAOs in extraordinary circumstances and
18 allowing deferrals, would be essentially removed
19 from that toolbox.

20 MIEC's attempt directly through
21 Mr. Meyer's testimony and indirectly through
22 Mr. Dittmer's testimony to prevent recovery of
23 these legitimately paid solar rebates should be
24 rejected.

25 The last substantive issue I want to

1 talk about is the fuel adjustment clause. OPC
2 seems hell bent on finding a way, any way it can,
3 to deprive the company of the use of a fuel
4 adjustment clause. OPC doesn't claim that the
5 company has misused the fuel adjustment clause.
6 OPC doesn't claim that the company has provided
7 information about its FAC that is different or in
8 less detail than it has provided in six cases in a
9 row.

10 OPC acknowledges that the Commission
11 has ruled in the past and judging the rule that OPC
12 claims the company has violated that a far, far
13 less level of detail, in fact, complied with the
14 rule, which means, if that's true, then the company
15 has to be in compliance with the rule.

16 And OPC acknowledges that the
17 Commission Staff, which is obviously the primary
18 party charged with evaluating FAC requests, FAC
19 adjustments, conducting prudence reviews, has not
20 once expressed a concern about the explanations
21 that the company's provided under the rule at issue
22 and is providing in this case.

23 The evidence in this case will show
24 that OPC is simply wrong and that its positions on
25 the FAC are unsupported by the facts.

1 The company -- and I've said this, I
2 think, every time we've been here. Our witnesses
3 have said it. I'm sure they will again. The
4 company recognizes that the FAC is a privilege.
5 It's not a right. But it is a very important
6 mechanism to the company. To eliminate it without
7 justification -- and to be clear, the evidence will
8 show that OPC's so-called justification is lacking
9 in substance and credibility -- or to change it
10 also without justification would be a horrible step
11 in the wrong direction and would reflect a reversal
12 of the positive step the Commission took years ago
13 when it approved a fuel adjustment clause for
14 Ameren Missouri and actually for other electric
15 utilities in Missouri who were eligible to receive
16 one.

17 There's one more FAC issue that has
18 been raised in this case, and that is MIEC's
19 attempt to preclude inclusion of most of the
20 transmission charges the company must incur, must
21 pay to MISO or other transmission providers in
22 order to procure the energy that it has to acquire
23 to serve its customers.

24 Transmission charges have been
25 reflected in the FAC from the very beginning of the

1 FAC. The Commission rejected attempts to change
2 this in the company's last rate case. The
3 Commission -- or excuse me. The Court of Appeals
4 then upheld the Commission's decision.

5 MIEC is back again making an argument
6 that fails to reflect the reality of operations in
7 a regional transmission organization like MISO and
8 which would preclude the company from including
9 these legit transmission charges that it has to
10 pay, that it has to pay because of the energy that
11 it takes from the MISO market.

12 As the evidence will show, the
13 Commission got this decision right in the last
14 case, and there's no reason to change it now.

15 I've taken up enough of your time
16 this morning, I'm sure, but the reason I did that
17 is because this is an important case. And while
18 many of the issues in the case have been resolved,
19 the ones that remain are very important.

20 They are important for the company's
21 ability to continue its solid and, if I may, its
22 excellent operating performance and reliability
23 over the last several years. And it's important
24 from the standpoint of the overall effectiveness
25 and constructiveness of Missouri regulation of its

1 electric utilities.

2 Your attention, your patience and
3 certainly your hard work, and I recognize that
4 presiding over a rate case from where you sit,
5 certainly trying one on my side of the bench is
6 certainly hard work, and it's greatly appreciated
7 by the company. We look forward to developing the
8 record in this case for you, and I'd like to thank
9 you again for your patience and attention.

10 JUDGE WOODRUFF: Any questions from
11 the Bench?

12 CHAIRMAN KENNEY: Mr. Lowery, thank
13 you, and thanks for your opening statement. This
14 is a general comment or question. One of the
15 things that we're discussing this morning are
16 regulatory policy considerations. It's a broad
17 issue that doesn't have any particular resolution.

18 How do we address the fact that rates
19 are going up, and I know you said it's like 2 and a
20 half percent a year over the last several years,
21 how do we deal with that in light of the fact that
22 they're going up faster than wages and wages are
23 typically sagging or decreasing over the last --
24 since 2008? What are we to do?

25 MR. LOWERY: Well, I don't think

1 there's a lot that the Commission can do. I think
2 those are issues that you have to go across the
3 street to the Capitol to address or you may have to
4 go to Congress to address or a combination of the
5 two.

6 I think your job, and it's not an
7 easy job, particularly in light of the
8 circumstances that you just outlined, your job is
9 to decide what the appropriate cost of service is
10 for its utilities, and it is what it is.

11 Now, certainly utilities need to act
12 prudently. Utilities need to manage their costs.
13 Utilities need to make investments prudently and
14 not make investments they don't need to be making.
15 And if those things are happening, then you have
16 the ability to not reflect costs or not reflect
17 investments. That's something that you can do.

18 But if the utility is doing its job,
19 it has to -- it has to invest in its generation
20 systems, its transmission and its delivery and
21 distribution. It's got to pay its suppliers. It's
22 got to pay its costs. And if it's doing that
23 appropriately, and if that results in a revenue
24 requirement of X, then your statutory obligation
25 and I think what the General Assembly has delegated

1 to you says, then you've got to provide the rates
2 that allow them to cover those costs and to give it
3 a reasonable opportunity to actually earn its cost
4 of equity.

5 That's maybe not an easy answer to
6 hear, but I think that's the only answer that
7 really exists to that question. Folks that are
8 elected are, I think, charged with solving the
9 larger societal problems that I think you've
10 raised.

11 CHAIRMAN KENNEY: How does your
12 answer take into account our obligation to reflect
13 the public interest?

14 MR. LOWERY: Well, I don't think your
15 obligation to reflect the public interest means
16 that you can implement economic and social policy
17 even if you might have an urge to want to do that.

18 There's a -- certainly the public
19 interest demands that utilities over the long run
20 are able to have robust, properly operating systems
21 to provide the service that the statute obligates
22 them to provide.

23 Utilities are -- you know, we hear a
24 lot about utilities are monopolies. Of course,
25 that's why you're here, because utilities are

1 monopolies. That's absolutely true. But one thing
2 that's different about, you know, if you think back
3 to the old standard oil days, you think about the
4 traditional monopolies and it's sort of a negative
5 connotation. They didn't have a commission that
6 supervised their operations.

7 And there's something else they
8 didn't have. They didn't have an obligation to
9 serve. They could do business with whomever they
10 wanted or whomever they didn't want to.

11 We have an obligation to serve. We
12 have to keep the plants running. We have to keep
13 the lines operating. We have to keep people in
14 service trucks. We have to do all of those things.
15 It doesn't matter. It doesn't matter if we want
16 to. It doesn't make any difference. We have to do
17 that, and I think the Commission expects us to.

18 And that means that we have to have
19 an ability to recover our legitimate cost of
20 service. That's the way the system works.

21 CHAIRMAN KENNEY: Thank you for your
22 answer.

23 JUDGE WOODRUFF: Commissioner Hall.

24 COMMISSIONER HALL: Good morning.

25 MR. LOWERY: Good morning.

1 COMMISSIONER HALL: Just a few
2 questions. It's my understanding that rate case
3 expense is going to be one of the items that will
4 be on the stipulation that we should receive later
5 today for discussion tomorrow?

6 MR. LOWERY: That's correct.

7 COMMISSIONER HALL: Then I'll hold
8 off on most of my questions on that issue until
9 tomorrow. But based on the testimony that I read
10 and the issue, the issue statements by Ameren and
11 other parties, what's being contemplated is an
12 18-month normalization for rate case expense?

13 MR. LOWERY: That's right.

14 COMMISSIONER HALL: Is that because
15 it is anticipated that you'll be coming back for a
16 rate case in 18 months?

17 MR. LOWERY: Well, I don't know
18 exactly when we anticipate being back for a rate
19 case. I think that -- I think the reason that
20 period was chosen is because that's what history
21 has shown us over the last several years.

22 And like most -- well, maybe I
23 shouldn't say most. I don't think there's much of
24 anything that's always. But like the vast majority
25 of normalization adjustments, we look at history

1 for normalization adjustments. We don't look
2 forward in Missouri at setting rates almost for
3 anything. And so we use history as a guide. We
4 assume in the ratemaking process that history is
5 the best guide that we have, and I think that's
6 what's been done here.

7 COMMISSIONER HALL: In observance of
8 protocol, should I defer to my --

9 COMMISSIONER STOLL: I have no
10 questions. I'll catch up. Continue.

11 COMMISSIONER HALL: All right.
12 Switching topics to the -- to the AAO for the ice
13 storm lost costs.

14 MR. LOWERY: I don't believe there's
15 an ice storm AAO issued in our case. I'm sorry.
16 That one. I'm sorry. The Noranda AAO.

17 MR. THOMPSON: You call it the lost
18 revenue.

19 COMMISSIONER HALL: It was an
20 extraordinary event. My question is, what do you
21 believe the proper standard is for determining
22 whether or not we should take that deferred amount
23 and roll it into rates?

24 MR. LOWERY: Well, I think the proper
25 standard is whether or not the company had engaged

1 in any kind of imprudence that caused the event,
2 caused the expenditures, caused the sums to be
3 deferred, whether it was otherwise not calculated
4 properly. I think there has not been an instance,
5 to my knowledge, and I have I think read every
6 single AAO case that this is Commission has ever
7 decided a least in the last 40 or 50 years -- maybe
8 I didn't go back in the first half of the
9 century -- where the Commission has ever not
10 allowed recovery through an amortization of a sum
11 that allowed for deferral on a different ground
12 than that.

13 COMMISSIONER HALL: Switching gears
14 again to the wholesale power arrangement with
15 Noranda proposal, it's my understanding based on
16 the testimony that I've read that it's Ameren's
17 proposal or concept that whatever agreement,
18 whatever contract that would be entered into
19 between Noranda and Ameren would have to be
20 approved by the Commission?

21 MR. LOWERY: That's true. Can I
22 amplify the proposal just a little bit?

23 COMMISSIONER HALL: Sure.

24 MR. LOWERY: The proposal is really
25 moot unless Noranda agrees to it. So -- and at

1 this point we have no such agreement at all. So if
2 Noranda -- so the proposal is this: If Noranda
3 were agreeable to enter into a wholesale contract
4 in the nature of that had been described in our
5 testimony, then yes, Ameren Missouri would be
6 willing to do that but on certain conditions,
7 including the Commission approved it.

8 COMMISSIONER HALL: And that approval
9 would involve a prudency evaluation?

10 MR. LOWERY: Yes, it would.

11 COMMISSIONER HALL: And is it your
12 anticipation that if there were such an agreement,
13 the contract rate would be below cost of service?

14 MR. LOWERY: It would be below what
15 we call fully embedded cost of service as you would
16 determine by a class cost of service study, that's
17 right. It would be at market rates -- based upon
18 it's tenor and its terms, it would be at market
19 rates today.

20 COMMISSIONER HALL: How could the
21 Commission find it prudent that the company entered
22 into a contract with below cost of service rates?

23 MR. LOWERY: Well, because the
24 Commission could determine that, given the
25 circumstances, I mean, Noranda is in here asking

1 for a rate that has -- and I think you probably saw
2 in Ameren Missouri president Michael Moehn's
3 testimony, any rate that we would be willing to
4 agree to in such a contract would be above and
5 probably materially above, certainly materially
6 above the rate that Noranda's proposing, but also
7 would be materially above the rate that some of the
8 consumer representatives had previously agreed to
9 in a stipulation they filed in this case.

10 I think the Commission would just
11 have to take into account the totality of the
12 circumstances, the fact that the customer had
13 agreed to it, the customer had agreed not to be --
14 for the company -- for Ameren not to have an
15 obligation to serve under the CCN any longer, take
16 into account the facts of Noranda's claimed need,
17 and the Commission would decide whether or not, as
18 an overall package, whether or not that was an
19 appropriate, prudent thing for the company to do.

20 If the Commission didn't believe that
21 it was, then you wouldn't give the prudence
22 determination and there would be no agreement.

23 COMMISSIONER HALL: So it is possible
24 for it to be prudent for a cost of service -- for
25 there to be rate set that's below cost of service?

1 That's in essence what I'm asking.

2 MR. LOWERY: Well, if you're asking
3 is it possible for it to be prudent, yes. That's a
4 different question as to whether or not you can
5 approve a below cost of service rate, truthfully
6 one that's not really within even the zone of what
7 cost of service would be as retail ratepayer
8 without running afoul of the unduly discriminatory
9 and unduly preferential provisions of the statute.
10 That's a different question in my mind.

11 COMMISSIONER HALL: I believe that's
12 all I have.

13 MR. LOWERY: Thank you for your
14 questions.

15 COMMISSIONER STOLL: I have no
16 questions at this time.

17 MR. LOWERY: All right. Thank you.

18 JUDGE WOODRUFF: Mr. Lowery, I do
19 have one question. That \$200 million figure, does
20 that include the -- does that incorporate the
21 settled issues that were addressed this morning or
22 will that be --

23 MR. LOWERY: I believe it does.

24 MS. TATRO: That doesn't, no.

25 MR. LOWERY: Well, I guess I'm not --

1 I don't have it my mind well enough to maybe answer
2 your question. Maybe Ms. Tatro does.

3 MS. TATRO: The 200 is the request
4 after true up. It does not reflect the adjustments
5 which would have occurred as part of a settlement.

6 JUDGE WOODRUFF: Okay. We'll hear
7 more about that, then?

8 MS. TATRO: Right.

9 JUDGE WOODRUFF: Thank you.

10 MS. TATRO: And if I may -- I'm just
11 a little out of protocol, I guess, but just to make
12 sure there's no confusion, Commissioner Hall, the
13 wholesale issue, that decision isn't whether it
14 reflects cost of service, because wholesale
15 contracts never reflect the retail cost to serve.
16 It's very different. It's a market issue. So you
17 would look at whether it's a proper reflection of
18 the market price.

19 The question about whether it
20 reflects the wholesale or the retail cost to serve
21 is if they're a retail customer. That's the
22 distinction that I think your exchange perhaps was
23 missing. So I apologize for butting in, but
24 hopefully that's helpful.

25 JUDGE WOODRUFF: Let's move to Staff,

1 then.

2 MR. THOMPSON: Good morning. May it
3 please the Commission?

4 I'm going to take up a lot less of
5 your time than Mr. Lowery did because you're going
6 to be hearing what we call a mini opening before
7 each issue is taken up, and that, I think, is the
8 proper place to get down in the weeds about the
9 details of these issues.

10 What I'm going to talk about first of
11 all is the ratemaking formula and the job that the
12 Commission has. It's a very important and complex
13 job. It's easy to sum up in a statute by saying
14 that you have to set just and reasonable rates, and
15 that's a simple thing to say, but it's not a simple
16 thing to do, and it's not even a simple thing to
17 describe.

18 You know that there is a ratemaking
19 formula, and you know that that formula is
20 basically a two-step formula. In the first step
21 you determine just how much money is this utility
22 going to have to collect on an annual basis going
23 forward to pay for the service that it's going to
24 provide to its customers. Just how much money will
25 that take? The revenue requirement we call it.

1 And you know that the revenue
2 requirement consists of the necessary, reasonable
3 and prudent operating and maintenance expenses, the
4 sum of those added to the product of the rate of
5 return multiplied by the rate base at net -- excuse
6 me -- at original book value less accumulated
7 depreciation. So in other words, all of the money
8 the investors have invested in the company at its
9 original cost less the accumulated loss of value of
10 that investment over time, and that's multiplied by
11 the rate of return. And those two -- that figure
12 plus the revenue requirement, that's the rate.
13 That's the amount of money the company has to have
14 annually. Already I'm almost unconscious talking
15 about this arithmetic.

16 The second step then is to figure
17 out, well, how are we going to collect that from
18 the customers? How will we design rates that will
19 collect that amount of money from the customers?
20 And we do that by looking at normalized weather and
21 billing determinants, meaning how much electricity
22 did they sell and how much are they likely to sell
23 in a normal year and how many customers. And
24 again, you almost fall asleep just thinking of all
25 the factors that go into that.

1 So it's a simple thing to say just
2 and reasonable rates, but it's a complicated thing
3 to do. So that's your job. And I remind you that
4 Missouri courts have said that your job is to
5 protect the public from the monopoly power of the
6 company. To protect the public from the monopoly
7 power of the company. Because the public have
8 nowhere else to go. If they can't afford their
9 electric service, there's nowhere else for them to
10 turn.

11 So your job to protect the public
12 while giving the company adequate revenue resources
13 to provide services, and certainly that also
14 includes a reasonable opportunity to earn a fair
15 return on the value of their investment.

16 What is Staff's role in all this?
17 Well, we work for you. We are your information
18 gathering arm. We are the body that collects
19 information for you and analyzes it and provides it
20 to you to help you do your job. As this
21 proceeding shows, we're certainly not the only
22 party gathering information and analyzing it and
23 presenting it to you, but we are the only party
24 that doesn't have any stake, other than the fact
25 that it is our job to assist the Commission in

1 doing this thing.

2 We are sometimes referred to as a
3 neutral, although not everyone believes that. We
4 tend to be tight with the money. When the company
5 says we need this amount of money to do this part
6 of our job, we tend to say, oh, really? Oh, do you
7 really? Let's see those receipts. Let's see those
8 invoices. Let's understand exactly how you
9 calculated that, because what air did you below
10 into that bag? What padding is in there?

11 And so that's our job, to go through
12 the figures, to go through the books, and to pull
13 out every penny that Staff believes is not
14 necessary, reasonable or prudent.

15 You heard from Mr. Lowery about the
16 big issues that are going to be in this case, and
17 some of them really don't involve Staff. We don't
18 have much of a fight, if any, with the company on
19 income tax or solar rebates. We're not trying to
20 strip away the FAC. Those are other parties that
21 are doing those things.

22 The biggest issue in this case, as
23 usual, and as Mr. Lowery said, is return on equity.
24 Return on equity. As you know, capital consists of
25 two types, debt and equity. And so equity

1 investments, well, those are stocks that are
2 purchased by investors. So what return should they
3 get? That's something that you set.

4 And, in fact, in response to the
5 Chairman's question about what can you do when
6 rates are rising faster than wages, what can you
7 do? Well, what you can do is you can reflect in
8 the return of equity that you allow a lower figure.
9 You can set it lower.

10 David Murray, whose professional
11 qualifications are second to none, has provided you
12 with ample testimony explaining how the cost of
13 equity for this company has fallen. After 2008,
14 two things happened. It became harder, harder for
15 a lot of people to access credit, but it became
16 cheaper for those who could.

17 A company like Ameren Missouri has no
18 trouble accessing credit, has no trouble finding
19 capital, and it's cheaper for Ameren Missouri today
20 than it was in the past, and Mr. Murray's testimony
21 explains that.

22 In fact, if you look at the four
23 recommendations in front of you for return on
24 equity, Mr. Hevert on behalf of the company
25 suggests 10.4, while Mr. Murray suggests 9.25,

1 Mr. Gorman on behalf of the MIEC suggests 9.3, and
2 Mr. Schafer on behalf of Public Counsel suggests
3 9.01.

4 I am reminded of an Ameren case some
5 years ago when then Chairman Jeff Davis asked
6 Mr. Murray, well, does everyone else have it wrong?
7 No one else is anywhere near your number,
8 Mr. Murray. Is everybody else wrong? I think you
9 could ask that question of Mr. Hevert in this case.
10 Is Mr. Hevert the only analyst who has it right?
11 Can that be possible?

12 In the area of rate base, Staff
13 differs from the company by 8 and a half million.
14 Most of this is an AEIT net operating loss carried
15 forward issue.

16 In revenues, we differ from the
17 company by 12 million. And these numbers, by the
18 way, have not been corrected to reflect the issues
19 that were settled on Friday. It's always dangerous
20 when lawyers talk about numbers.

21 For expenses, Staff differs from the
22 company by 50.7 million, of which depreciation
23 accounts for 22 million. The Noranda lost revenue
24 AAO is worth 7 million.

25 Where am I getting these numbers?

1 From the reconciliation that was filed Friday
2 night. The reconciliation shows the value of the
3 company's request at the top, \$200 million, as
4 Mr. Lowery explained, after true up, and then
5 successively subtracts from that figure the value
6 of each of the issues where another party
7 disagrees, and there are columns. Staff has the
8 first column, and there's other columns for MIEC,
9 and OPC and Wal-Mart and Sierra Club, each of whom
10 have a few issues. Only staff has a figure for
11 every issue, as does the company. You'll see that
12 for Staff, return on equity is worth \$69 million.
13 \$69 million.

14 Other issues that you're going to
15 hear about include two different trackers, the
16 storm tracker and the vegetation management and
17 infrastructure inspection tracker. What is a
18 tracker, you may be wondering? A tracker is a
19 species of what -- Lewis Mills coined the term, I
20 think he coined it, regulatory ratchet, and a
21 tracker is a type of regulatory ratchet. It is
22 something that changes the return on equity in
23 between cases. Between cases.

24 And a tracker then accounts for the
25 amounts in that account specifically. So it's just

1 not lost in the total revenues and expenses of the
2 company only to be examined in a following rate
3 case. Instead, it is specifically tracked for
4 every expenditure and every revenue.

5 Staff's position is that the
6 infrastructure inspection and vegetation management
7 tracker is no longer needed because a full cycle
8 has been completed. We now know what the size of
9 those expenses are. They can be handled in base
10 rates. The company was originally granted those
11 trackers because it was a Commission regulation
12 that imposed new duties on the company in that
13 area.

14 Secondly, the storm restoration
15 tracker. It's Staff's position that traditional
16 ratemaking has allowed this company to recover
17 every penny it has ever spent on storm restoration.
18 In fact, there have been years when there have not
19 been as much storm restoration expense as there is
20 that revenue built into rate base, built into,
21 excuse me, base rates. They have done very well
22 through traditional ratemaking.

23 There are other issues having to do
24 with changing tariffs for this or that item that
25 you will hear about, most of which do not have much

1 in the way of a financial impact.

2 The last thing I want to talk about
3 is the Noranda AAO, what the company has called the
4 lost revenues AAO, and what everyone else refers to
5 as the Noranda ice storm AAO. You will recall that
6 this reflects money that was never collected from
7 Noranda by the company because service to Noranda
8 was interrupted by an ice storm. And the company
9 asked for -- well, first they sold the power that
10 they didn't need to use for Noranda, they sold
11 the power to some other buyers, some bulk power
12 buyers by contract.

13 And the Commission then disallowed
14 those transactions as being imprudent because the
15 company didn't want to share that revenue through
16 the FAC on the 95/5 split. You recall the FAC is
17 designed so that off-system sales, that 95 percent
18 of the benefit goes to the ratepayers, 5 percent
19 goes directly to the shareholders.

20 Noranda being part of the company's
21 base load, any revenue from Noranda doesn't go
22 through the FAC, right? The company gets all of
23 that. So the replacement power in Staff's view,
24 and the Commission supported it, should have gone
25 through the FAC, should have been shared. This

1 left a shortfall. So the company came in and
2 sought an AAO for this shortfall, we think for that
3 shortfall. They say no, this is actually the
4 capital costs that we didn't get revenue to cover.
5 In other words, we didn't sell this power to
6 Noranda like we expected to, and we had capital, we
7 had certain fixed costs that we didn't collect any
8 money for.

9 The Commission gave them this AAO,
10 and it has been approved by the Court of Appeals.
11 Now they want to put it into revenue requirement.
12 Now they want to collect it in rates.

13 Staff is opposed to this for several
14 reasons, which you have already heard. It makes
15 the ratepayers an insurer, for example. And I
16 would suggest that if anyone is going to pay this
17 amount, it probably should be Noranda who was the
18 original contracting party.

19 Thank you very much for your time.

20 JUDGE WOODRUFF: Questions?

21 CHAIRMAN KENNEY: Just a couple.

22 Thank you. Let me just start with the last thing
23 you said about the AAO making the consumer an
24 insurer. Mr. Lowery said there's never been an
25 instance in his review of case law going back about

1 50 years in which we have denied the recovery in
2 rates of a previously approved AAO on the basis
3 that it's imprudent.

4 MR. LOWERY: On a basis other than
5 imprudence or miscalculation. If I said the other,
6 I apologize.

7 CHAIRMAN KENNEY: Is that accurate in
8 your -- no. You were correct. I was mistaken. Is
9 that accurate, as far as you're aware?

10 MR. THOMPSON: I have no reason to
11 doubt what Mr. Lowery said.

12 CHAIRMAN KENNEY: Okay. Let me go
13 back then to the statement that you made about
14 trackers. As a general proposition, what is your
15 opinion about when it's appropriate to grant a
16 tracker? For what reasons should they be reserved?

17 MR. THOMPSON: a tracker is like a
18 continuing AAO. It creates a deferral that the
19 Commission can then in a following rate case push
20 in whichever direction it wants, depending on
21 whether the tracker is positive or negative.

22 So it clearly needs to be a special
23 cost that for some reason deserves different
24 treatment. Now, that reason could be policy. It
25 could be statutory. But primarily it should be

1 because of volatility, because it is a cost the
2 company cannot control and one which, for reasons
3 of fairness, the company should receive
4 reimbursement of.

5 Storms are certainly a good example.
6 If there's going to be a gigantic unexpected storm
7 that causes costs far beyond anything that was
8 contemplated when rates were set, we expect the
9 company to restore service as quickly as humanly
10 possible, and they should recover those costs. So
11 storms is a good example.

12 CHAIRMAN KENNEY: So those would be
13 the public policy considerations?

14 MR. THOMPSON: Yes, sir.

15 CHAIRMAN KENNEY: Or in the case of
16 vegetation management where it's been imposed by
17 Commission rule?

18 MR. THOMPSON: Exactly.

19 CHAIRMAN KENNEY: And the other
20 considerations are volatility and unpredictability?

21 MR. THOMPSON: Yes, sir.

22 CHAIRMAN KENNEY: And Staff's
23 position is that to the extent that they become
24 predictable and are not volatile, that a tracker is
25 no longer indicated; is that correct?

1 MR. THOMPSON: That's exactly right,
2 and in the case of vegetation management and
3 infrastructure inspection, it is predictable
4 because we finished a full series where they've
5 done a full round of inspections and a full round
6 of vegetation management, both urban and rural. So
7 there it's predictability. We know what the costs
8 will be.

9 In the area of storms, it's
10 different. Storms remain unpredictable. But
11 history shows the company has never failed to be
12 reimbursed, and this can be done by simply granting
13 an AAO when necessary in the wake of a major
14 unexpected storm rather than granting an ongoing
15 permanent AAO in the form of a tracker.

16 CHAIRMAN KENNEY: Then my last
17 question, trackers as a general proposition reduce
18 risk?

19 MR. THOMPSON: Yes, they do.

20 CHAIRMAN KENNEY: And then how do we
21 quantify that and reflect it in rates if we do
22 grant the tracker?

23 MR. THOMPSON: Well, it certainly
24 should result in a lower ROE because ROE is a
25 reflection of risk. The higher the risk, the

1 higher the ROE. So anything you do to reduce risk
2 should bring the ROE down. But by how much, I've
3 never had a lot of success getting the experts to
4 tell me in terms of basis points. That's a
5 question you could ask them.

6 CHAIRMAN KENNEY: Fair enough. Thank
7 you, Mr. Thompson.

8 MR. THOMPSON: Thank you, sir.

9 JUDGE WOODRUFF: Commissioner Stoll?

10 COMMISSIONER STOLL: I have no
11 questions. Thank you.

12 JUDGE WOODRUFF: Commissioner Hall?

13 COMMISSIONER HALL: Is it
14 contemplated that we are going to have openings
15 before each issue?

16 JUDGE WOODRUFF: Yes. We'll do what
17 we call mini openings that will get into the
18 details of each issue as it comes up.

19 COMMISSIONER HALL: I'll hold my
20 questions for then.

21 MR. THOMPSON: Thank you, sir.

22 JUDGE WOODRUFF: We've been going for
23 about an hour and half, and we'll go ahead and take
24 a break before we go on to the opening for Public
25 Counsel. Let's come back at 10:15.

1 (A BREAK WAS TAKEN.)

2 JUDGE WOODRUFF: We're back from our
3 break, and Dustin Allison has taken the podium on
4 behalf of Public Counsel. If you'd like to proceed
5 with your opening.

6 MR. ALLISON: Thank you, sir. May it
7 please the Commission? I'm Dustin Allison
8 appearing on behalf of the Office of the Public
9 Counsel and all of Ameren Missouri's ratepayers in
10 this proceeding.

11 With your indulgence, I will talk
12 about three things primarily: First, some economic
13 background -- I think that's the topic du jour -- a
14 little bit on ROE because I think that will
15 probably come up within the policy and the economic
16 conversation occurring today, and a little bit
17 about the FAC, again, I think probably because
18 you'll hear some policy testimony about that today,
19 and then after that I'll have a few closing
20 thoughts.

21 You've heard directly from ratepayers
22 throughout this proceeding through written comments
23 and through oral testimony, and you've heard a lot
24 of them -- or a lot from them about a lot of
25 different topics, particularly our residential

1 customers.

2 But what I think you haven't heard
3 from those residential customers is one thing I'd
4 like to take a moment to reflect on, and I think
5 you can probably detect what I'm about to say
6 implicitly in your review of their comments, but I
7 don't think you've heard that customers in Ameren's
8 service territory are saying nowadays that they're
9 having a particularly easy time making ends meet.
10 Right?

11 I know there's a negative bias in our
12 process. You know, happy people don't come to --
13 don't tend to come to our public hearings and
14 submit comments telling Ameren how great they're
15 doing and, yes, please raise my rates. That
16 doesn't tend to happen. What tends to happen is if
17 people have a complaint, then they tend to come to
18 the public hearings. And I acknowledge that kind
19 of bias towards negativity in the process.

20 But I think that the evidence is
21 going to demonstrate -- and Mr. Stahlman does this
22 for Staff, Dr. Marke for OPC -- that a very
23 substantial number of folks out there who haven't
24 had the time or the ability to offer comments at a
25 hearing or to send e-mail to the Commission, that

1 silent majority, I think they are, too, hardly
2 interested in seeing their rates increase more than
3 is absolutely necessary to provide safe and
4 reliable service.

5 I don't think you've heard anybody
6 and I don't think you're going to hear anybody say,
7 go ahead, I'm not cost sensitive. I'm happy to pay
8 more. Nobody's saying that. And that may seem to
9 be an obvious point, but -- of course it is.
10 Nobody wants to pay more.

11 But I think even though it's obvious,
12 it's worthwhile for us every once in a while to
13 take a step back from our technical conversations
14 about discounted cash flows and ROE, about
15 depreciation schedules and amortizations, and
16 remember where these customers are coming from.

17 And they're coming from a place in
18 which rates have increased cumulatively over
19 43 percent since 2007, while real wages have
20 declined, declined in that same period by about
21 2 percent. And you see that reflected on the
22 figure coming from the testimony of Geoff Marke.
23 In the first column, increase in average weekly
24 raises, 10.51 percent. Same period, 12.35 percent
25 increase in the Consumer Price Index. That is

1 negative wage growth over the same period in which
2 Ameren is receiving 43.16 -- and sometimes
3 different people have a different way to calculate
4 that number. I've seen that slightly different --
5 but 43.16 percent increase in rates.

6 So shareholders are getting an ROE of
7 9.8 percent. Ameren's asking for 10.4 percent, but
8 we've got negative wage growth in the same period,
9 and you've got Ameren saying that their
10 shareholders deserve more. I think that is not
11 just. I don't think that's reasonable.

12 Customers are approaching this from a
13 place where in four key areas of recovery they're
14 still behind where they were pre recession: The
15 number of jobs available now compared to before the
16 recession; the number of employed people, which is
17 different than the number of jobs available, but
18 the number of employed people now compared to
19 before the recession; housing prices compared to
20 before the recession; and gross county product or
21 gross domestic product before the recession.

22 And throughout Ameren's service
23 territory and, frankly, the state of Missouri,
24 Missourians are being squeezed, and a sizeable part
25 of that squeeze is due to the massive growth in

1 their utility payments. And if you look at this
2 chart, this chart offers in each one of those four
3 components of recovery for each county in Missouri
4 where each county is doing on those. And you see
5 St. Louis County, St. Louis City, we have seen zero
6 recovery from where -- compared to where those
7 indicators were prior to the recession. There's
8 been, of course, some recovery from the bottom of
9 the recession, but they have not gone back to where
10 they were prior to the recession.

11 Only Boone County and one other
12 county here have even three of those four
13 indicator. No county, no county has fully
14 recovered to where they were under those four
15 metrics prior to the recession. And I think
16 that's -- I think that's really important. That
17 represents 3.34 million people in 61 counties that
18 Ameren serves in whole or in part.

19 And again, here we see on this chart,
20 only one county has recovered an employment rate --
21 an unemployment rate back to where they were
22 pre recession. Only 12 of 61 counties have jobs
23 recovered to where they were prior to the
24 recession. 16 for gross domestic product. Home
25 prices recovered, only 14 of 61 total counties.

1 And yet Ameren is here asking for a 10.4 percent
2 ROE.

3 So the Commission as it examines this
4 case and the justness of reasonableness of
5 proposals, for instance, to 60 basis points to ROE,
6 it must be viewed through the impact that those
7 proposals will have on ratepayers.

8 A proposal to continue an overly
9 generous fuel adjustment clause, for instance, one
10 requested despite the fact that the company has
11 been overearning for two years in a row now, must
12 be viewed through that same impact prism.

13 Request to violate Missouri's
14 longstanding regulatory compact in order to earn
15 revenue in this case which Ameren failed to earn
16 years before due to an ice storm must be viewed
17 through the justness and reasonableness of that
18 request as it relates to impact on the ratepayers.

19 I don't say this to suggest that
20 Ameren's management and board don't care about
21 their customers. I think they do. I take them at
22 face value when they offer that.

23 But the company's platitudes about
24 trying to protect customers doesn't tell us the
25 whole story. The truth is, and this is a very

1 understandable one, Ameren resolves every tension
2 or seems to from my perspective resolve every
3 tension between its customers and its shareholders
4 in favor of its shareholders. I don't think that
5 should be a surprise. I think that's expected.
6 But let's not pretend here that there's anything
7 will altruistic going on there. There isn't.

8 And so particular proposals about,
9 for instance, rate design, which we'll discuss in
10 more detail later in the case, I think need to be
11 examined with a clear eye toward the proponent's
12 motives and remembering that the impact is -- the
13 impact that those proposals will have on
14 ratepayers.

15 Turning again to ROE for a moment
16 with a little bit more particularly, and I
17 recognize we're going to have an opportunity to
18 delve into this each time these issues come up, so
19 I'll try to keep this high level. But I think the
20 Commission's being asked to raise the company's ROE
21 by 60 basis points for little reason other than a
22 totally subjective and frankly fairly weak argument
23 about the State's regulatory environment.

24 I think in effect the company says
25 that if the Commission doesn't agree with its

1 request for a 60 basis point increase in ROE,
2 Missouri will suddenly be converted into some type
3 of hostile territory for investors and woe the
4 future of Missouri should the Commission actually
5 reduce ROE.

6 I think the company is quick to
7 resort to this argument when it becomes clear to
8 all that its financial models fail to withstand
9 scrutiny. Now, instead of fixing its modeling
10 under the sustained and consistent criticism of all
11 three of the other experts in this case, the
12 company's expert falls back on a well-worn,
13 subjective, unprovable and counterfactual trope
14 regarding Missouri's regulatory environment.

15 Mr. Hevert I think posits the
16 existence of a reasonableness standard for ROEs,
17 and in doing so he conveniently sets up a paradigm
18 in which anybody who disagrees with his conclusion
19 is somehow unreasonable. This is a tens of
20 millions of dollar increase by definition. If you
21 disagree with that, you are somehow unreasonable.

22 And OPC doesn't dispute, I think, I
23 view that ROEs authorized in other jurisdictions is
24 one relevant data point, and you see that in our
25 surrebuttal testimony. I think we make very clear

1 that is one factor of many factors.

2 But we don't give that the same
3 weight or undue weight that I think Mr. Hevert
4 would have the Commission afford that.
5 The Commission -- Mr. Hevert would have the
6 Commission place frankly far too much weight on
7 extrinsic factors, comparative and frankly
8 subjective factors in its analysis compared to what
9 I think is a much more intrinsic analysis, legally
10 authorized and recognized analysis looking at
11 financial modeling, and traditional I think
12 analysis.

13 It's not that we don't say that that
14 isn't a relevant data point. We, in fact, do. But
15 there's a heck of a lot more to it than just that.
16 And I think Mr. Hevert goes there because he
17 doesn't have any other place to go.

18 There's a reason why we undertake
19 those financial models to assist the Commission in
20 determining ROE, and it's because those models are
21 the same financial models private actors use in
22 determining the financial health of companies, the
23 evaluation of companies, which companies in which
24 they desire to invest.

25 And I think it's very telling that

1 all three of those models from the non-Ameren
2 experts in this case fall within a very tight range
3 of one another. They are all independently
4 undertaken, and they're all coming in within
5 29 basis points of one another. Certainly each of
6 the non-utility experts approaches this modeling a
7 slightly different way. The inputs and some of the
8 underlying factors go into it slightly differently,
9 and you can read their testimony ad nauseam about
10 that.

11 But the fact that they each come to
12 those conclusions I think speaks volumes about the
13 frankly unreasonableness of Ameren's request. And
14 to be sure, when performing this modeling, we
15 include a proxy group. That's part of the modeling
16 process. We look at similarly situated utilities
17 and what their financials are telling them and the
18 reality that they're dealing with.

19 And so the modeling already possesses
20 an appropriate, I think a legally approved
21 component of subjective comparative evaluation of
22 the company's -- the company's comparisons. To add
23 more weight to those extrinsic factors I think
24 risks impermissibly basing the ROE on factors that
25 bear too little relationship to this case and this

1 company and this jurisdiction.

2 And so I would encourage the
3 Commission to avoid that trap that Ameren would
4 have you fall into.

5 Now, another issue that I referred to
6 is the FAC. Very simply, OPC asserts that the
7 company hasn't submitted the information required
8 by the Commission to enable the Commission to
9 authorize an FAC in this case. Not only has the
10 company failed to meet the Commission's FAC minimum
11 filing requirements, the company has not cured that
12 omission despite, frankly, months of prodding by
13 OPC.

14 After imploring the company through
15 data requests and motions to file with the
16 Commission the information required by the rule,
17 the company still hasn't done so.

18 And I think, frankly, you can
19 contrast the record in this case with a similar
20 issue that came up in the Empire case in which the
21 company was very cooperative in trying to resolve
22 these issues with OPC, and I think we are coming to
23 a very favorable result about the adequacy of the
24 initial filing in that case.

25 And so at this point OPC can only

1 conclude that the reason that the company in this
2 case, Ameren, hasn't met the standard for an FAC is
3 because it can't. The facts don't exist on
4 volatility. They don't exist on manageability.
5 They don't exist on magnitude and the other factors
6 necessary for the Commission to determine whether
7 or not to grant an FAC.

8 And the company says that the parties
9 should be looking to its surveillance monitoring
10 reports that it files, not with the Commission,
11 that it gives to the parties in order to determine
12 what both the company wants prospectively but also
13 to prove what the company should have put in its
14 direct case in this matter.

15 But the past monitoring reports
16 cannot be used to justify the continuation of an
17 FAC. That's not what they're there for. The
18 company's request for an FAC is prospective.

19 Of course, when OPC points out that
20 the monitoring reports also demonstrate that the
21 FAC has facilitated a two-year pattern of
22 overearning, the company suggests conveniently that
23 the monitoring reports can't be used for that
24 process. Oh, now it doesn't matter. It's
25 important for us when we need to prove our case,

1 but when we don't like it, that's no good. I'm
2 sorry to say, I don't think it's both a shield and
3 a sword.

4 But is that -- frankly, from my
5 perspective, it's one of the few purposes for which
6 monitoring reports are actually relevant in this
7 conversation is to demonstrate that historically
8 the company has advocated for and received an FAC
9 when it didn't need the mechanism in order to have
10 an opportunity to recover its eligible costs and
11 maintain an opportunity to earn a fair return on
12 investment.

13 We have shifted the risk to the
14 ratepayer through this FAC and they didn't need it.
15 Recall that the FAC was intended to do only that.
16 In the early 2000s an old argument was rehashed
17 from the 1970s that fuel and transportation costs
18 of that fuel were somehow volatile, unmanageable
19 and for the utilities growing so drastically that
20 regulatory lag was prohibiting them from being able
21 to recoup their costs and have an opportunity to
22 earn a fair return.

23 So in order to ensure that they could
24 operate in a dynamic environment, the utilities
25 prevailed upon the Legislature to permit them the

1 opportunity, not the right, but the opportunity to
2 ask for an interim rate mechanism for these costs,
3 and the utilities succeeded in getting that
4 legislative change.

5 And every since, though they say they
6 understand it's not a right, they sure as heck act
7 like it's going to be here in perpetuity. They act
8 like it's a right and not the discretionary
9 mechanism that requires an assessment each time
10 it's being asked to continue of this Commission
11 that does that dynamic environment on fuel, does
12 that unmanageability currently exist, is it
13 projected to exist, is it volatile, is it -- is it
14 of a magnitude that requires us to deviate from
15 traditional regulatory ratemaking and give them
16 this extraordinary measure?

17 And they have not put that forward in
18 this case. The FAC was intended to help with fuel
19 costs. I note that in this case fuel and purchased
20 power for native load has increased only 6 percent
21 since the last case for the FAC, and yet the FAC
22 increases in Ameren'S proposal is 23 percent. So
23 we're seeing this expansion of additional cost
24 types into the FAC away from what was originally
25 intended by the Legislature to help manage volatile

1 fuel purchases.

2 We have evidence that coal and
3 transportation price risk is hedged with long-term
4 contracts to control the growth of that cost, the
5 volatility of that cost, the manageability of that
6 cost, and coal is 80 percent or near 80 percent of
7 Ameren's fuel source.

8 On magnitude, the real driver of the
9 changes to the FAC come from reduced off-system
10 sales revenues and costs. Costs and revenues for
11 native load are not driving magnitude. We have
12 nothing on volatility. We have nothing on
13 unmanageability. Nothing.

14 In Ameren's first rate case, this
15 Commission determined that no volatility had been
16 demonstrated, and in the absence of such evidence,
17 granting an FAC would result in the worst possible
18 outcome for ratepayers. And the Commission was
19 right. Ameren rectified that omission in the next
20 case. They presented evidence of volatility, and
21 they, frankly, have been resting on the adequacy of
22 that evidentiary record ever since, and that needs
23 to stop.

24 Ameren must demonstrate in each case
25 that a dynamic, unpredictable, unmanageable fuel

1 cost environment exists such that they cannot
2 fairly recover its costs or earn a return on that,
3 and that has not been done here. Now, OPC is not
4 suggesting that they don't get to recover their
5 costs. Right? What we are suggesting is that
6 those need to be moved down into base rates.
7 Nothing we're suggesting says you don't get to get
8 your prudently incurred costs. Of course you get
9 to get your prudently incurred costs, but that's
10 got to move down in base rates.

11 Now, OPC is suggesting Ameren hasn't
12 demonstrated its need for an FAC, but if an FAC
13 does continue, we need to get it back to what it
14 was intended to when the Legislature passed the
15 mechanism. Ameren's history suggests a consistent
16 effort to expand the costs -- we've seen a history
17 where they don't put the revenues in but they put
18 the costs in, right -- and that flow through the
19 FAC. And so now the FAC has grown to encompass
20 changes much broader than what the Legislature
21 intended.

22 Now, again, moving those costs back
23 into base rates, yes, that will have an effect of
24 increasing the base rate. It does. If they have
25 prudently incurred costs, particularly in fuel, I

1 think everybody agrees, you need to recover them.
2 But that interest, that desire to rebase those
3 costs should not -- is not supported by a desire to
4 keep artificial base rate -- keep base rates low
5 artificially, certainly not appropriate where your
6 desire is to suddenly increase or suddenly bolster
7 the purported need for an FAC by keeping additional
8 costs in an FAC that should frankly be in base
9 rates.

10 So rebasing those costs helps to
11 narrow the exception to traditional ratemaking that
12 we have on the FAC, restores balance between
13 shareholders and ratepayers, I think promotes
14 certainty for ratepayers and avoids volatility on
15 the customer's bill.

16 And finally, I think we've talked
17 about the sharing mechanism in our testimony.
18 You'll hear more about that here. I would just
19 offer that a 95/5 sharing mechanism I think history
20 is telling us doesn't provide the adequate
21 incentive that the Commission might have hoped it
22 would when it first entered the 95/5 sharing
23 mechanism.

24 There were a lot of proposals at that
25 time, including a very substantial support among

1 consumers and others for a 50/50 sharing mechanism.
2 I think Commissioner Davis was the one who led the
3 charge on a 95/5 sharing mechanism. I'm thinking
4 that was it. I think the utilities didn't want
5 anything. They probably don't want anything now.
6 And that's -- I can understand that point of view
7 from their perspective.

8 We think that a 90/10 sharing
9 mechanism going forward, to the extent that there
10 is an FAC, which we oppose, but to the extent that
11 that continues to exist, a 90/10 mechanism will
12 help to provide the incentive that I think the
13 Commission probably thought it was trying to
14 provide when it first entered the 95/5.

15 I finally just want to take a brief
16 moment to mention rate design before I close and
17 take your questions. I think the consumer parties
18 have been engaged in advanced conversations among
19 themselves in recent days about how to reconcile
20 their different perspectives in this case, and I
21 think as the Commission is well affair, those
22 differences are particularly acute in this case.

23 The nexus around a lot of that
24 conversation has to do with Noranda's request. I
25 think Staff and Ameren are also engaged in those

1 conversations.

2 And so there's a lot of, I think,
3 activity happening in that space right now. We
4 don't have any agreement among anyone, but I
5 wouldn't be surprised if at least a partial
6 agreement were to come forward in the near future.
7 I don't know that it would be nonunanimous. At
8 this point I can't say one way or the other. I'm
9 hopeful. Hope springs eternal.

10 So while there are no guarantees, I
11 look forward to working constructively with Ameren,
12 Staff and the other consumer parties to resolve
13 many of those issues and perhaps even some
14 additional revenue requirement issues in the
15 future.

16 With that, I'll just offer that OPC
17 has taken positions on a number of other issues I
18 haven't mentioned here in this case and has
19 reserved the right to adopt the positions of the
20 other parties as the evidence comes in. We have
21 taken positions on stuff where we feel very
22 strongly and have provided a lot of independent
23 work and support for that.

24 So if you look at the reconciliation
25 that was filed on Friday, you'll see a bottom line

1 number, which is I think a calculation of the
2 amount off of Ameren's case that once you just look
3 at the OPC lines. That is not to say that we
4 disagree necessarily with the adjustments that
5 Staff has made or any other party has made. It is
6 to say, however, to date we have not taken those
7 positions yet but we may when the briefs come.
8 With that caveat, I wanted to make sure that that
9 reconciliation was looked at from that perspective.

10 And with that, I'm happy to take any
11 questions you want.

12 JUDGE WOODRUFF: Mr. Chairman, any
13 questions?

14 CHAIRMAN KENNEY: Yes. Thank you.
15 Mr. Allison, thanks for your opening statement.

16 MR. ALLISON: Thank you.

17 CHAIRMAN KENNEY: Just a couple of
18 quick questions. Let me start with the last thing
19 you mentioned about rate design. Are the issues
20 around which OPC is engaged beyond the Noranda
21 stuff, just the residential rate design issues, are
22 you guys advocating for a particular rate design
23 that's favorable to energy efficiency or favoring
24 low users? What's the general -- what's the
25 general area around which OPC is engaged?

1 MR. ALLISON: Sure. OPC I think is
2 consistently interested in ensuring that the
3 residential and small general service classes
4 receive, I think, adequate representation. OPC is,
5 of course, also mindful of our obligation to
6 represent all classes. So it's a balance that I
7 take seriously to do that.

8 But I do take the residential and
9 small general service ratepayers' interests, I
10 think, in particular in mind as we move forward in
11 conversations with others on rate design.

12 As you might expect, the Noranda
13 issue takes up a lot of the conversation because
14 how that issue is resolved I think frankly impacts
15 what additional room other consumer classes feel
16 they have to maneuver in that negotiation.

17 But I think with respect to
18 particular sub-issues, low income, energy
19 efficiency, those types of things, we are
20 supportive, I think, of Ameren's proposal with
21 respect to the low income -- to a low income carve
22 out, and I think you'll see that reflected. If
23 not, again, I'm eternally hopeful. I think we
24 probably will. Otherwise, I wouldn't have
25 mentioned some type of at least nonunanimous

1 partial stipulation and agreement on rate design to
2 offer. I hope it's unanimous. But OPC will take
3 the position that we're supportive of that, of
4 Ameren's proposal.

5 CHAIRMAN KENNEY: So let me ask about
6 the FAC. I think Mr. Lowery said something like
7 90 -- upwards of 90 percent of electric utilities
8 in the country now have some type of fuel
9 adjustment clause --

10 MR. ALLISON: Uh-huh.

11 CHAIRMAN KENNEY: -- rate adjustment
12 mechanism. So to the extent that Ameren has to
13 compete in a broader market for capital, to what
14 extent does the fact that every other utility in
15 the country has an FAC, to what extent should that
16 inform our analysis because they are competing
17 against other electric utilities? Wouldn't they be
18 disadvantaged by not having that mechanism
19 available to them in terms of competing for
20 capital?

21 MR. ALLISON: I think we have a
22 statutory mechanism for the FAC that's -- and rules
23 that incorporate the standard that the Commission
24 should apply in determining whether or not to
25 continue an FAC. I don't see within that

1 explicitly a consideration of extra-territorial
2 rate mechanisms that apply to companies that aren't
3 regulated by this Commission.

4 That is a distinct question, however,
5 from I think the ROE context. I think in the ROE
6 context we have a just and reasonable, all relevant
7 factor analysis for ROE that is our normal standard
8 for ratemaking. And I think when you're looking at
9 ROE, you have to look at all relevant factors in
10 order to come to just and reasonable rates.

11 And in the ROE context, I have to
12 concede, I wouldn't like to but I have to concede
13 that you need to look at what other authorized ROEs
14 are in other jurisdictions. But I think the
15 standard for continuing to permit an FAC to go
16 forward, I think the cardinal points on that are,
17 you know, is it -- do you have evidence of
18 volatility, do you have evidence of under
19 unmanageability, this utility's ability manage
20 those costs, the magnitude of this utility's costs,
21 the volatility of this environment. Not the
22 environment six months ago when they did something
23 in the state of Washington or three months ago, but
24 now and what we think it's looking like at the time
25 that this Commission has to make a decision. I

1 think those are the cardinal standards we have to
2 employ.

3 CHAIRMAN KENNEY: So let me ask a
4 question about that standard, the volatility and
5 manageability or unmanageability. Is it OPC's
6 position that Ameren has failed to marshal evidence
7 in support of the fact that it's volatile and
8 unmanageable or is it OPC's position that it's not
9 volatile and it is manageable? It's a slightly
10 different question.

11 MR. ALLISON: No. It's fair. It's
12 fair. We don't have evidence as to the second part
13 of your question in the record in this case, and so
14 I think that that answers the first part of your
15 question. Because it wasn't our burden to put that
16 evidence forward. It was the company's. They
17 totally failed to do that.

18 They haven't done that since their
19 second request for an FAC, by the way. They failed
20 to do it their first time, and then, frankly, from
21 our perspective, they've just been resting on the
22 laurels of the evidentiary record in that second
23 case in each case thereafter, and we don't think
24 that that's adequate.

25 CHAIRMAN KENNEY: I don't have any

1 other questions. Thanks.

2 JUDGE WOODRUFF: Commissioner Stoll?

3 COMMISSIONER STOLL: I just wanted to
4 ask a question about the overearnings. On page 8
5 of your handout where you show the difference
6 between actual and allowed ROE, what did you use to
7 make this analysis, the surveillance reports?

8 MR. ALLISON: Correct. This comes
9 from, I recall, Lena Mantle's testimony where she
10 talks a little bit about the FAC and the risk shift
11 that the FAC has represented onto ratepayers.

12 And one of the points that she makes
13 in that analysis is that when you look at the
14 surveillance monitoring reports that Ameren suggest
15 that we should be looking at for everything about
16 the FAC, you come to this conclusion when you
17 compare it to -- when you compare their authorized
18 ROE with what they actually received in that
19 period.

20 Now, of course, I think Ameren will
21 appropriately tell you that they have under-earned.
22 There have been periods of under-earning. This
23 is -- we're looking at a period of time that is I
24 think almost entirely or totally inclusive of how
25 long they've been out since the last rate case.

1 So from our perspective, in this
2 entire period of time since the last rate case,
3 they've been overearning. That's the relevant time
4 period.

5 COMMISSIONER STOLL: Have they -- if
6 that would be the case, why hasn't a complaint been
7 filed to bring them in to --

8 MR. ALLISON: There was a complaint
9 case filed.

10 COMMISSIONER STOLL: Okay. I know
11 what you mean. Okay. Why hasn't Staff, for
12 example, filed a complaint?

13 MR. ALLISON: I can't speak for Staff
14 on that. I apologize. I think -- I can only
15 represent what I understood their position to be in
16 last complaint case, and Kevin can correct me if
17 I'm wrong, but part of -- at least part of what I
18 thought their position was, was there wasn't a
19 sufficient opportunity in that case to perform what
20 Staff would require, a full analysis to be
21 performed in that case in order to understand
22 whether or not the Commission -- not that they
23 weren't overearning, but that the Commission should
24 order an adjustment in rates in that case as a
25 result of the complaint.

1 COMMISSIONER STOLL: So in this rate
2 case, we will have that full record?

3 MR. ALLISON: We have that
4 opportunity.

5 COMMISSIONER STOLL: Okay. Thank you
6 very much.

7 MR. ALLISON: Thank you, sir.

8 JUDGE WOODRUFF: Commissioner Hall?

9 COMMISSIONER HALL: Thank you. Good
10 morning, Mr. Allison.

11 MR. ALLISON: Good morning.

12 COMMISSIONER HALL: Ameren makes much
13 of the fact that their current rates are 20 percent
14 below national average, well below the midwest
15 average and the lowest amongst the IOUs in the
16 state of Missouri. That's accurate, correct?

17 MR. ALLISON: Yeah, accurate. I
18 don't know how relevant it is, but accurate.

19 COMMISSIONER HALL: You anticipated
20 my next question. What is the relevance of that?

21 MR. ALLISON: If there is one, I
22 don't think very much of it. I mean, I think we
23 have to look at the -- at the company in front of
24 the Commission. We have to look at the company's
25 cost structure that is in front of the Commission,

1 and then we have to set rates accordingly.

2 I think to the extent that we're
3 looking at issues extrinsic to the company, that
4 comes into play to some degree, not the degree to
5 which Mr. Hevert would ask this Commission to take
6 it into account, but to some degree in authorizing
7 an ROE, but that's it.

8 COMMISSIONER HALL: Isn't it relevant
9 in the context of your conversation or your -- your
10 argument about residential ratepayers' wages not
11 keeping up with Ameren rate increases? If the
12 rates are already well below the national average,
13 why is that something we should take into account?

14 MR. ALLISON: Well, I -- that
15 discussion was limited to the counties within
16 Ameren's service territory, or at least the
17 comparative component of that discussion I intended
18 to limit to the counties within Ameren's service
19 territory.

20 But I think, yeah, you can take a
21 broader view of that if you want, which is to say,
22 you know, there is no evidence and there won't be
23 any evidence in the record to say that the -- that
24 the counties and the residents of Ameren's service
25 territory are doing any better than the national

1 average. There may or may not be evidence to
2 suggest that they're actually doing worse than the
3 national average.

4 And so when we start making these
5 national or comparisons outside of the service
6 territory, yeah, I mean, to your point, perhaps
7 apples to apples comparisons are important. But I
8 think at the end of the day, OPC will continue to
9 advocate for looking at impacts, what are the
10 ratepayers in Ameren's service territory, what is
11 the reality that they're dealing with because we're
12 looking at what the realities of the company are.

13 COMMISSIONER HALL: I guess from my
14 perspective the two arguments mitigate each other,
15 and we up here need to take them both into account.

16 MR. ALLISON: Yeah.

17 COMMISSIONER HALL: Let me ask you
18 this. As we discussed just a moment ago, OPC
19 makes much of the fact of residential ratepayer
20 wages not keeping up with Ameren's rate increases.
21 Are there any orders from the Commission that
22 expressly use that as a factor when setting rates
23 that you are aware of?

24 MR. ALLISON: So the last part of
25 your question is the part that I can do the

1 research and offer an answer to that. As I stand
2 here, I don't know the answer one way or another.

3 But I do think, you know, we have the
4 normal standard of what are all relevant factors,
5 right, and so I don't think that it is an
6 irrelevant factor, ability to pay, and ability to
7 pay is directly tied to wages. So I think that's a
8 relevant factor, I have to imagine, that we can
9 provide you additional support for.

10 COMMISSIONER HALL: I would
11 appreciate that.

12 MR. ALLISON: Will do.

13 COMMISSIONER HALL: I agree,
14 affordability is a key factor that the Commission
15 should take into account when setting rates.

16 Lastly, and this is more of a comment
17 than a question. I wanted to tell you that I
18 really appreciated OPC's analysis in its testimony
19 on the expansion or modification of the economic
20 development rider. Very interesting, very helpful.
21 And I would certainly hope that in your rate design
22 negotiations, that you would continue to advance
23 some of those concepts.

24 MR. ALLISON: I appreciate that. I
25 think we tried to take very seriously those

1 questions as they were posed by the Commission.
2 It's certainly something that we think is -- those
3 are important questions that are being brought up,
4 and they provide -- those questions illuminate
5 certain perspectives about rate design and how to
6 go forward. And we continue, I think -- and I'm
7 speaking for you and others as I say this. We
8 continue to have a desire to see those
9 recommendations reflected in final.

10 COMMISSIONER HALL: Thank you very
11 much.

12 MR. ALLISON: Thank you.

13 JUDGE WOODRUFF: Thank you. MIEC/
14 Noranda.

15 MS. VUYLSTEKE: Good morning. I have
16 an exhibit, another big exhibit.

17 JUDGE WOODRUFF: Before you begin
18 Ms. Vuylsteke, you're representing both MIEC and
19 Noranda. Are you doing a combined opening for the
20 two?

21 MS. VUYLSTEKE: Yes. Noranda is part
22 of the MIEC and just one opening. Thank you.

23 May it please the Commission? I have
24 a chart here that I think puts some context around
25 the case that some of the other parties have

1 mentioned. This is Ameren Missouri's rate case
2 history, and it demonstrates that over the period
3 of the last eight years we've had five rate
4 increases, five general rate increases, and
5 numerous FAC increases over that period. We're now
6 in our sixth rate case over that period of time.

7 And you can see here that Ameren has
8 requested and received actually 867 million in base
9 rate increases in the last eight years, and it has
10 also charged customers for the FAC in the amount of
11 \$612 million. The actual amounts that were
12 requested, though, by Ameren were 1.6 billion or 74
13 percent, and the amount that actually was granted
14 was about half of what they requested.

15 And I think this goes to the point
16 that was raised by Commissioner Hall. You asked
17 about affordability. You asked about whether the
18 fact that Ameren's rates are lower than some other
19 states is a factor in the case, and I think it is.
20 I think that the fact that Ameren has lower rates
21 than some states is a tremendous advantage -- is a
22 tremendous advantage in Missouri. It's an economic
23 advantage for our state. It's an economic
24 advantage for businesses. And I think that's an
25 advantage that we should want to preserve.

1 And I think that the reason that
2 rates are low in this state is partly because we
3 have a good regulatory framework and partly because
4 this Commission has been active in examining
5 Ameren's rates. And so I think that it's relevant
6 to the process for those reasons.

7 I think that if Ameren had been
8 granted the rate increases it had requested, we
9 would have very high rates relative to other
10 states.

11 Now, in this period of time, Ameren
12 asked for a lot of money, got about half of it, and
13 rates have gone up dramatically. 37 percent is a
14 lot of money. And for businesses that are
15 struggling, it's very difficult.

16 The question becomes when is enough
17 enough? How much -- how much rate increase can
18 consumers stand and can our economy withstand
19 before Missouri is not such a great place to do
20 business?

21 Okay. This chart shows Ameren's
22 historical reported earnings, and you see from this
23 chart that all of these revenues which were
24 generated by excess earnings over the period of the
25 last two years since the last rate case, in fact,

1 even before the last rate case decision, Ameren was
2 overearning in the months immediately preceding it,
3 and these amounts total hundreds of millions of
4 dollars.

5 And you can see here that, if you
6 look at the period of time right here, this is
7 where you were in the process of deciding their
8 last rate case, in late 2012. You made your
9 decision here. Rates went into effect here. And
10 all through this period you see overearnings.
11 There are only a few places where the revenues
12 actually were down, and that's really July and
13 August of 2013 and August of 2012. So you have a
14 large number here of revenues that were generated
15 by excess earnings.

16 You can see how high the returns are
17 here. Notice that in these -- in this chart
18 there's a gap, June 2014 to September 2014.
19 September 2014 is when Ameren reported its earnings
20 to the SEC. They filed their quarterly public
21 report. So that number comes from those.

22 The rest of the numbers on this chart
23 come from Ameren, reports that Ameren generated
24 internally that we got as part of the discovery in
25 this case. And when we asked for those internal

1 monthly reports that Ameren produced, we found that
2 they stopped generating them. They don't make them
3 anymore.

4 But I think that it's very important
5 because the issue of surveillance reports, the
6 reason that they exist is so overearnings can be
7 monitored for purposes of evaluating the FAC.
8 Surveillance reports are very relevant to special
9 rate mechanisms.

10 The Commission may not find them
11 persuasive in and of themselves to reduce rates,
12 and we're not asking the Commission to reduce rates
13 in this case based on overearnings. We are asking
14 the Commission to find that it should not continue
15 special rate mechanisms or allow them when the
16 utility is overearning, and that surveillance
17 reports are very relevant to that issue in a rate
18 case.

19 This chart shows excess revenues
20 graphically over the two-year period since the last
21 rate case and a little before. Over these two
22 years, you can see only one place where we had a
23 dip. They're pretty large overearnings. And when
24 you actually look at -- you can see in March of
25 2014 that the -- there was -- let's see. Yes.

1 \$110 million that Ameren had in revenues that
2 exceeded their authorized return, and that was the
3 same month in which Ameren incurred its Fukushima
4 study cost of a million dollars. So in a month
5 where they had revenues that high, they're asking
6 the Commission -- I'm sorry. That was incorrect.
7 It's about \$40 million that Ameren generated in
8 excess revenues in the month of this Fukushima
9 study.

10 And yet even though the Fukushima
11 study was a million dollars, they're saying they
12 have to amortize that cost over ten years, a cost
13 they easily could have covered in the revenues that
14 they had. And I think that's a demonstration of
15 where we're headed with all of these. Solar
16 rebates is another example. \$100 million in solar
17 rebates that could easily have been covered by
18 these excess revenues.

19 We're not asking to have overearnings
20 changed or money refunding, nothing like that.
21 You're setting rates prospectively in this case.
22 You're deciding whether to allow costs into rates
23 based on things that Ameren could easily have
24 covered up with the very large excess revenues that
25 it had. And that's really the issue in this case.

1 The question is really is it fair to
2 increase rates for deferred costs? I think that
3 under this circumstance and the way that the
4 amortizations are being used in this case, I'm
5 talking about solar rebates, MEEIA, talking about
6 the Ameren -- Noranda AAO or the ungenerated
7 revenue AAO and also talking about solar rebates.
8 Those items really are heads Ameren wins, tails
9 ratepayers lose. I think that's the way these are
10 coming out.

11 When Ameren argues for these
12 deferrals and amortizations, Ameren will typically
13 say, and other utilities, that this is not a
14 ratemaking. You're simply authorizing a deferral.
15 But on the other side, when it comes to a rate case
16 it says, well, you have to allow that because we
17 relied upon it. They say that unless it's
18 imprudent, it must go into rates.

19 That isn't the law in Missouri. And
20 if there are a few cases where the Commission's
21 done that in the past, there's also many places
22 where the Commission has not. And there are also
23 many occasions when the courts have decided that
24 the only reason it's okay to approve these
25 deferrals is because they're not actually

1 ratemaking.

2 Under the Missouri Supreme Court's
3 decision in UCCM, you have to look at all relevant
4 factors, and you cannot engage in retroactive
5 ratemaking. And that's a limit on the Commission's
6 discretion. And the Commission's discretion is
7 very broad, but you cannot, consistent with
8 Missouri law, not scrutinize every cost and every
9 revenue that occurs in a general rate case and take
10 one item of cost in isolation or one item of
11 revenue and allow that into a rate case without
12 looking at what's going on in the facts and
13 circumstances at the time.

14 If you can't look at a utility's
15 overearning, then I don't know what restraint there
16 would ever be that would be meaningful to
17 ratepayers on this type of practice, which
18 ultimately could lead to some kind of a
19 formula-type ratemaking that really takes your
20 discretion away.

21 I think that if the Commission is
22 going to start taking the position that trackers or
23 amortizations or deferrals or AAOs are going to
24 come into rates because once you've allowed that,
25 there's only a very limited review you can do, I

1 think that once the Commission starts doing that,
2 there will be a great -- much greater opposition to
3 those type of mechanisms. In addition, I think
4 they would violate UCCM.

5 And Chairman Kenney asked the
6 question of whether trackers change the utility's
7 risks or how they should be used, I think, and what
8 should be considered. I think that if trackers are
9 to be used as a method to provide a predisposition
10 or a prejudgment regarding cost recovery, I think
11 they would be unlawful and shouldn't be used at
12 all.

13 I think that if they are to be used
14 and when they have been used, it's generally by
15 agreement and only for very extraordinary costs and
16 also for things that are just difficult for the
17 utility to manage or material to the utility. But
18 I think this is unfair to allow this kind of
19 revenue to be generated with the use of deferrals.

20 This is the reconciliation, the
21 latest reconciliation in this case, and you can see
22 here that the Staff has a number here of
23 \$78 million that it believes that Ameren should
24 recover in rates in this case.

25 But the parties have generally

1 agreed -- I don't think there's any controversy
2 about this at this point -- that the net base fuel
3 cost that should be transferred over from the FAC
4 into the base rates is \$103 million. If you
5 subtract from the 78 million that the Staff's case
6 is at and you subtract 103 million, you're looking
7 at a negative \$25 million.

8 So Staff's case is saying there
9 should be a base rate decree after you include the
10 net base fuel cost. I think that's very
11 significant in view of the overearnings that we
12 have, and I think that it kind of correlates back
13 to the overearnings complaint that was filed last
14 year.

15 Similarly, MIEC's evidence also
16 likewise shows an even greater decrease in the
17 actual rate base cost after you allow for fuel, and
18 that's going to be like 57 million lower. So
19 57 million lower on MIEC's case and 25 million
20 lower on Staff's.

21 Now, we know that Ameren Missouri in
22 this case has a burden to -- they have the burden
23 of proof. And we know that during a period of time
24 from the last rate case to the present, that
25 Ameren's been overearning, and it has incurred and

1 recovered costs which is seeks now to recover truly
2 a second time in this case.

3 And we don't believe that Ameren can
4 meet its legal burden of proof to increase rates
5 for costs that it incurred when, by its own
6 reports, it is overearning. Maybe the Commission
7 feels -- and we recognize the Commission's order in
8 the overearnings complaint case -- that
9 surveillance reports even when adjusted may not be
10 enough and a whole audit may be needed for a
11 customer to file an earnings complaint. And that's
12 a very difficult burden for a customer to meet,
13 but we read the Commission's order.

14 On the other hand, though, I think
15 that in a case like this, in a rate case where you
16 have demonstration of overearnings reported by the
17 utility in the form of a surveillance report and
18 you look at the relevant period where a cost is --
19 they want to incur a cost from a relevant period, I
20 think that the Commission should take that into
21 account and not allow that cost to come into rates
22 because it is a double recovery.

23 If you cannot use these types of
24 reports in a case like this to challenge recovery
25 of a rate, I don't think you ever could. I think

1 that if Ameren's own reports show that it's
2 overearning and the Commission does nothing about
3 it, then we would not have effective and fair
4 ratemaking in this state.

5 And So the MIEC is asking the
6 Commission to do something about this problem and
7 to protect them from Ameren's use of AAOs and
8 deferrals in order to double recover costs.

9 Now, I mentioned before that the
10 amortizations that are really at issue are the
11 ungenerated revenue ice storm AAO, the MEEIA energy
12 efficiency expenditures, solar rebates, and the
13 Fukushima study.

14 We have a number of other issues in
15 the case as well, in addition to the amortizations
16 that I just discussed. One of -- and I'll just go
17 through our issues quickly. One of our issues is
18 income tax, and our witness is Mike Brosch, and the
19 issue is what is the correct level of Ameren
20 Missouri's income tax expense relative to the net
21 operating loss carried forward and domestic
22 production reduction?

23 We have the amortization issues I
24 mentioned. We also have the issue which Mr. Meyer
25 presents in his testimony of whether the Commission

1 should continue to allow the storm tracker and, if
2 so, what costs should be included there.

3 We also have an issue presented in
4 Mr. Meyer's testimony regarding whether the
5 vegetation management and infrastructure inspection
6 tracker should be continued and what should the
7 level of costs in the revenue requirement be.
8 Also, the question is presented of whether Ameren
9 Missouri's regulatory asset for vegetation
10 management should be recovered from ratepayers.

11 We, of course, have the issue of what
12 ROE should be authorized, which is presented in the
13 testimony of MIEC witness Mike Gorman. Maurice
14 Brubaker is our witness on class cost of service,
15 revenue allocation and rate design.

16 As Mr. Allison mentioned, the parties
17 are working toward an agreement on rate design
18 issues, and we hope it will be a global agreement
19 on all rate design issues. We also are hopeful
20 that perhaps a global settlement of the entire case
21 will be achieved, but at a minimum we certainly
22 would like to reserve rate design statements until
23 a mini opening, and parties will continue to work
24 on that agreement throughout the case.

25 Mr. Brubaker will also testify

1 regarding whether low-income customers should be
2 exempt from MEEIA costs and which customers should
3 bear the costs. Mr. Brubaker, will also testify
4 regarding Rider E, whether that should be
5 eliminated or modified.

6 An issue that may have settled but
7 we're not sure, but I think will likely settle, is
8 the Ameren Services allocations, which our witness
9 Steve Carver testified about. Jim Dauphinais is
10 our witness for the proper level for net base
11 energy costs and fuel adjustment clause issues.

12 And a big issue in the case is
13 whether Ameren should be allowed to recover
14 transmission costs in the FAC when the costs are
15 for purchased power. That's one of our big issues
16 in the case on FAC.

17 On our evidence regarding solar
18 rebates, as you look at that evidence presented by
19 Mr. Meyer, keep in mind, if you can, where those
20 solar rebates occurred and how they compare to the
21 overearnings chart. If you look at the solar
22 rebates, you can see that in every relevant period
23 the solar rebates were actually less than the
24 excess revenues. So they easily could have been
25 covered in rates if they would have just been timed

1 and placed into rates at the appropriate period.
2 They had the money to go ahead and take care of
3 those expenses at the time. So it's not
4 appropriate to defer them to this case.

5 I think it's important to recognize
6 with respect to the solar rebates, too, that a
7 major argument that Ameren had in the case, in the
8 overearnings complaint case was that the Commission
9 should deny the rate relief in the case because the
10 solar rebates were there, that those had to be
11 made, and that if it wasn't for the solar rebates,
12 then its reported earnings would have been lower
13 and, therefore, you shouldn't grant the
14 overearnings complaint partly attributable to the
15 solar rebates.

16 And at the same time here, you know,
17 the Commission denied relief in the overearnings
18 complaint, yet now Ameren wants to come in and
19 bring those in to a general rate case. So I think
20 that while we certainly stipulate to the recovery
21 of those costs one time, we can't stipulate to it
22 twice.

23 And I think Ameren's inconsistency in
24 relying so heavily on the solar rebate issue to
25 defeat the overearnings complaint should be taken

1 into consideration here.

2 Finally, I think the Commission
3 overall has a challenge in front of it on how it
4 preserves its discretion. I think that's an
5 overall theme in the case. I think that under UTCM
6 the Supreme Court is very clear that there are
7 certain duties of the Commission that are set out
8 in the statutes, and those duties -- you have to
9 look at all relevant factors. You have to weigh
10 all the facts.

11 When you look at costs and revenues
12 in isolation, when you go back to periods of time
13 where costs were recovered and not properly
14 reflected in rates, both for the protection of the
15 utility and the customer, those things are
16 necessary for the Commission to decide.

17 And I think in this case you can see
18 that a bad result could occur if you do not rein in
19 some of the amortizations and other special
20 mechanisms. I think that in the end it's about how
21 much discretion wants to reserve for itself and
22 continue to exercise under the law. And that's all
23 I have.

24 JUDGE WOODRUFF: Questions?

25 CHAIRMAN KENNEY: Just a couple,

1 Ms. Vuylsteke. Thank you for your opening.

2 So the four amortizations that MIEC
3 discussed were the solar rebates, MEEIA costs, the
4 AAO and the Fukushima study. My question is, with
5 respect to the solar rebates and the MEEIA costs,
6 aren't those two distinguishable from the AAO and
7 the Fukushima, with MEEIA because the statute talks
8 about treating those costs differently to encourage
9 energy efficiency investments, and solar rebates
10 for the settlement among a bunch of parties. So
11 aren't those two categories distinguishable from
12 the AAO and the Fukushima study?

13 A. I think there are differences on each
14 of the items, but I think the relevant point that
15 they share in common is whether or not they were
16 required to be allowed by statute or by stipulation
17 and we agreed that they were required to be
18 allowed, the issue is whether they're allowed to be
19 recovered twice. That's the relevant issue.

20 We're not questioning that the
21 utility should be able to recover those costs, but
22 they had the revenues to cover those costs.
23 They've already had all the money they needed to do
24 that.

25 CHAIRMAN KENNEY: So the argument, as

1 I understand it, that these costs are being
2 recovered twice is because during the relevant
3 period Ameren was overearning?

4 MS. VUYLSTEKE: It was because Ameren
5 generated excessive revenues because it was
6 overearning, and therefore, because it was
7 generating excessive revenues, the recovery of
8 those costs already occurred.

9 CHAIRMAN KENNEY: I see. Okay. And
10 then is it MIEC's position that the FAC should be
11 discontinued in its entirety?

12 MS. VUYLSTEKE: No, that is not our
13 position. I do think that I agree with the Office
14 of the Public Counsel and we support Public
15 Counsel's position that it's really impossible to
16 make the determination of whether the FAC is
17 operating the way it's supposed to at any
18 particular time or meeting the statutory
19 requirements if there isn't complete transparency.

20 I can't understand why Ameren would
21 not provide the information that Mr. Allison has
22 been asking for that's required by the Commission's
23 rules. You can't evaluate the FAC if you don't
24 know what costs are in it.

25 And when the statute was enacted it

1 was explicitly discussed and there's language in
2 the statute that says that the FAC, if you're going
3 to allow it in effect, you have to look at the
4 utility's earnings. The surveillance reports are
5 the reason that happened.

6 So again, I think to do an evaluation
7 of whether the FAC should be continued, you have to
8 look at earnings and you also have to look at all
9 the costs. So it's hard to answer that question
10 but we don't take that position in this case, that
11 the FAC should be eliminated. We'd like to look at
12 it.

13 CHAIRMAN KENNEY: Thank you. I don't
14 have any other questions.

15 JUDGE WOODRUFF: Commissioner Stoll?

16 COMMISSIONER STOLL: I have no
17 questions at this time.

18 COMMISSIONER HALL: I have no
19 questions. Thank you.

20 JUDGE WOODRUFF: Thank you. The next
21 party on the list is Sierra Club. Is there anyone
22 here from Sierra Club? They can do their mini
23 opening when they get to their issue.

24 Consumers Council?

25 MR. COFFMAN: May it please the

1 Commission? I've got my own similar chart.
2 Consumers Council will not belabor all the issues
3 that we think are important here but to talk about
4 three of them, that is the amortizations and AAOs,
5 the fuel adjustment clause and the return on
6 equity.

7 And we disagree with the opinion of
8 the utility you heard earlier that the Commission
9 really has no recourse to protect the public and
10 address the economic considerations. We believe
11 that you really are at the point -- you are the
12 fulcrum on the scales of justice, so to speak,
13 between the utility and the public interest,
14 between the shareholders and the ratepayers, and
15 you do have a great deal of discretion to make some
16 important policy and economic decisions.

17 If you want to reduce it to the
18 reconciliation, there's well over \$100 million at
19 stake here on an annual basis, and those dollars
20 translate into really important costs that can
21 hardly be avoided by many of the captive customers
22 in the service territory.

23 We would ask that you look at what
24 the customers in this specific service area have
25 told you, and really want to thank you. The

1 Commission has been very good about allowing the
2 public the opportunity to come to public hearings,
3 and the Commissioners I know have spent many hours
4 traveling to these public hearings, and I think
5 that they are really worthwhile and important and
6 they wind up presenting evidence to you.

7 Here we'll spend days if not weeks
8 talking about the utility's perspective and the
9 utility's evidence about what its cost of service
10 is, but I believe that you need to weigh that
11 against what is going on with the individuals who
12 actually have to pay the bills that would be
13 increased if Ameren gets what it's proposing.

14 And I would ask that you take into
15 account every mechanism that you adopt, every
16 deferral, every Accounting Authority Order, every
17 expansion of the fuel adjustment clause weights
18 down this side of the scales. And consumers look
19 for something on this side of the scale, but it
20 hardly ever happens. There's hardly ever any
21 mechanism that seems to work to our favor.

22 I know that we raise the fact that
23 these -- each of these amortizations and each of
24 these deferrals and surcharges and trackers and
25 riders. For heaven's sake, every one of them

1 reduces the utility's risk, but we hardly ever see
2 the corresponding recognition when you get to the
3 return on equity. That is one area where you can
4 try to weigh it.

5 Let me dispense with the amortization
6 issues. I know you've heard quite a bit of it
7 already. This is again from Greg Meyer's
8 testimony. His charts I thought were very
9 illustrative. And this particular page 2 of his
10 schedule shows the overearnings over the past
11 period together with the red line, which is the
12 expenditure for the solar rebates that are the
13 subject of the deferral and the issue that our
14 witness Jim Dittmer will testify on on Wednesday.

15 And by the way, these overearnings,
16 indeed we can see that the earnings reports, which
17 of course were developed as a result of the fuel
18 adjustment clause and because of concerns that the
19 fuel adjustment clause would lead to this very type
20 situation where there are excessive earnings, and
21 that these -- we concede that these costs do need
22 to be adjusted if they're going to be the basis of
23 a rate reduction.

24 But they're actual earnings. This is
25 actual. This is not allowed ROE. This is exactly

1 what the utility collected. Maybe you need to
2 adjust it for a variety of considerations. But
3 when it reaches this level, it's serious. And
4 when -- you know, when under-earnings have been
5 even half this size, you see the utility come here
6 with similar charts and data to complain about the
7 fact that the previous years they've experienced
8 under-earnings. It can go both ways. When it
9 reaches this level of deviation from the target
10 return on equity, the utility files a rate case and
11 it gets corrected rather quickly.

12 And they don't have to file motions
13 to declassify the information. They just release
14 it. They say we haven't been earning enough, and
15 they make it a big part of their case. So when it
16 goes the other way, this is why you see consumers
17 pointing to it when it goes the other way. I think
18 it is an indication of what has been growing, I
19 think, in Missouri utility regulation, these other
20 mechanisms, these things that are tilting the
21 scales. I think there's a relationship there.

22 And this is when -- this is when the
23 last rate case was decided, by the way. This was
24 the 0-- the 0166 case. This is when the Report and
25 Order came out, during an overearning period. It's

1 not surprising that overearnings continued after
2 that. And then the earnings complaint case I
3 believe was decided on Halloween, October 2013. So
4 this is when the 0223 case was decided, and that's
5 the case where the Commission decided there wasn't
6 enough evidence to reduce rates. And Consumers
7 Council was very disappointed in that decision. We
8 thought that the evidence was pretty strong, the
9 weight of the evidence would have indicated the
10 rate reduction.

11 JUDGE WOODRUFF: Mr. Coffman, are you
12 sure the date on that was -- 0223, that was just
13 this last -- that was in 2014.

14 MR. COFFMAN: Oh, I'm sorry. Cross
15 that out. That would be -- but it was October. I
16 guess it would be this period. Not this period.

17 JUDGE WOODRUFF: It would not be on
18 your chart, I believe.

19 MR. COFFMAN: It would be over here.
20 I'm sorry. So during the period of significant
21 overearnings at that time. And in that order the
22 Commission cited to Ameren's argument that one of
23 the things that needed to be adjusted were the
24 increase in solar rebates that it was paying, the
25 amount of solar rebates that it was paying and that

1 it was going to continue to pay.

2 And even though the Staff's
3 preliminary audit showed the overearnings right
4 around 25 million, if I recall, the solar rebates
5 were going to be estimated to be about 33 million.
6 So the argument was the solar rebates more than
7 covered even the preliminary audit suggestion that
8 there was a need for a \$25 million reduction.

9 And so although we were disappointed
10 in the Commission's decision not to reduce rates
11 six months ago, we were -- we were heartened by the
12 fact, well, at least that means that some of these
13 solar rebate costs that we saw wouldn't be then
14 carried forward into the next rate case.

15 But sure enough, when Ameren filed
16 its rate case, it asked for the full amortization
17 from the stipulation that it entered into with
18 other parties. Not my client. My client did not
19 participate in that case. We did participate in
20 the 0223 earnings complaint case.

21 And by the way, we take umbrage of
22 the fact that somehow we were carrying this issue
23 on behalf of MIEC. We were -- we were concerned
24 about it as soon as this case was filed and have
25 retained a witness because we think it is a very

1 significant matter and that utilities should not be
2 allowed to earn these costs more than once.

3 That's always the risk when you do an
4 accounting authority order, you defer these costs,
5 and that's the reason that the Court of Appeals in
6 Missouri made it very clear that these are not
7 ratemaking decisions. And in every AAO decision
8 I've ever seen from the Commission, the Commission
9 has also been very clear, this is not a ratemaking
10 decision. We're deferring these costs so that when
11 it gets to a rate case, we can then look at this in
12 the context of all relevant factors and weigh it
13 against what happened during that deferral period.

14 And I was involved in some of the
15 earliest AAO decisions. Heck, that was 25 years
16 ago. And the main concern at the time and the
17 reason that it was argued that the Commission
18 should be making a ratemaking decision at the
19 deferral decision was the concern about this very
20 fact, that there might be overearnings, and even
21 though costs are deferred, it would be allowing
22 even more than would otherwise be allowed, even
23 during a period when the utility had sufficient
24 cost to cover those. So that's that issue.

25 The fuel adjustment clause. As you

1 know, Consumers Council has always opposed the fuel
2 adjustment clause, and we still believe that of all
3 the utilities, at least in this state, Ameren
4 Missouri deserves that remedy the least. We
5 understand it's become sort of an institution in
6 Missouri, and we will -- we'll be engaged in those
7 issues, particularly the concern that it's an
8 ever-growing pot of costs and issues, particularly
9 the transmission projects which are actually hard
10 assets and we don't think was intended when the law
11 was passed. Courts disagree, though. That's in --
12 we have to contend with this.

13 That being said, and understanding
14 that it's unlikely we're going to convince you to
15 discontinue the fuel adjustment clause, although
16 that's our preferred position, I would offer that
17 most of the concerns about the fuel adjustment
18 clause can be addressed through the sharing
19 mechanism.

20 Almost nothing that's wrong with the
21 fuel adjustment clause can't be fixed with a more
22 sharing percentage. When I hear sharing, I usually
23 think 50/50, and that continues to be our
24 preference. If you were to move beyond the
25 95 percent/5 percent to Public Council's position,

1 we would see that as a real positive step forward.

2 Perhaps it would increase the
3 incentive for Ameren to do better in its
4 procurement practices. We know that, and you'll
5 hear repeated over again, there's largely nothing
6 we can do about many of these costs, but there
7 are -- there is some ability to control those
8 costs.

9 You heard Jim Lowery earlier say that
10 these costs have been going up despite our efforts.
11 So there are efforts being expended, and we would
12 like there to be a greater incentive incenting
13 those efforts.

14 The last issue, return on equity.
15 This, of course, is an issue where you can balance
16 the interests, that there is a zone of
17 reasonableness that you have to work with in
18 protecting the public, \$82 million between the
19 9.01 percent of Public Counsel, which we support,
20 and the utility's suggestion that it be increased
21 to 10.4 percent.

22 And I may disagree with other parties
23 that have said that you should look at other
24 commission decisions. I don't really think that's
25 relevant. Those are quasi-political,

1 quasi-judicial decisions in other jurisdictions. I
2 think the thing you really should look at is actual
3 economic information, the things that are inputs to
4 the DCF model rather than looking at allowed ROEs,
5 actual, actual earnings as opposed to the allowed
6 decisions I think is what really should drive that,
7 and that that should be where you look to balance
8 the interest between consumers and ratepayers.

9 The idea that anyone has been allowed
10 or any enterprise has been allowed to earn nearly a
11 10 percent or above is really inconsistent with the
12 reality that most individuals and households and
13 businesses have to live in the real world.

14 And if you'll just indulge with me,
15 I'd like to mention a couple more real people that
16 have their testimony in the transcript of the
17 evidence from the public hearings to help you keep
18 in mind what you're balancing against.

19 Stephanie Wooten in St. Charles
20 talked about her four kids, two of whom are in
21 college. She has five years until retirement. She
22 says that every increase in her electric rates
23 takes away from what she can spend on college, on
24 college education of her children and for her
25 retirement.

1 Linda Fields in Ferguson testified
2 that she had been out of work since the recession
3 until just two years ago. Her salary has not
4 increased, and that any increase in electric
5 utility costs would be very, very hard to afford.

6 Jerry Jones of St. Louis County,
7 retired electrician, talked about having to balance
8 food, medicine and rent against his utility costs.
9 He's had -- he decided to really cut back on his
10 energy usage, including no Christmas lights this
11 year. He estimated that the 1.7 percent increase
12 in Social Security this year would be 15 more
13 dollars in his budget this month. \$10 of it would
14 be taken out by Ameren's proposed rate increase.

15 And finally, Jesse Tudaro, a small
16 businessman in the city of St. Louis. He says that
17 since the recession he hasn't been able to pass on
18 any of the cost increases to his business. He's
19 had to absorb all of them, and any increase in his
20 expenses have to come out of his retirement
21 annuities to pay.

22 And so keep those individuals in mind
23 and realize that every dollar that is a
24 discretionary dollar in this case affects real
25 people. Thank you.

1 JUDGE WOODRUFF: Thank you,

2 Mr. Coffman. Any questions?

3 CHAIRMAN KENNEY: Just a few.

4 Mr. Coffman, thank you.

5 So let me just address the last point
6 that you made. How can we take into account that
7 extrinsic evidence but not take into account ROE
8 decisions in other jurisdictions and Ameren's
9 ability to compete for capital?

10 MR. COFFMAN: Well, I think their
11 ability to compete for capital is relevant, and I
12 think that's incorporated in the DCF analysis. Of
13 course, it can be done a variety of different ways
14 in this case. Gives you a -- that's the zone of
15 reasonableness I think that is in the law, the ones
16 that could be supported by experts, and so you have
17 that range.

18 The zone of reasonableness I don't
19 think is really relevant is the zone of
20 reasonableness when you look at other public
21 utility commissions' allowed ROEs. I think you
22 should look at the actual earnings. The DCF inputs
23 would show actual earnings.

24 CHAIRMAN KENNEY: Let me ask a
25 related question regarding the continuation of

1 Ameren's FAC. It's the same question I asked
2 Mr. Allison. To what extent should we take into
3 account the fact that upwards of 90 percent of all
4 the electric utilities in the United States have an
5 FAC and the impact that it would have on Ameren's
6 ability to compete for capital if we are to
7 discontinue it?

8 MR. COFFMAN: I understand, and
9 that's why I'm focusing on the sharing percentage,
10 which of course is authorized under the law, and I
11 think that that would allow the fuel adjustment
12 clause to exist but mitigate it, understanding the
13 off-system sales and the particular situation that
14 Ameren Missouri is in, and also the fact that every
15 amount of that that is shifted on to consumers is a
16 shift in the -- you know, I guess you could also be
17 compensated by reducing the ROE in a corresponding
18 manner, but that doesn't seem to work real well.

19 CHAIRMAN KENNEY: Let me ask a
20 question about that because you mentioned that
21 before. Let me back up and ask another question
22 about the FAC first. So do you acknowledge then
23 that whether Ameren has an FAC or not would impact
24 its ability to compete against other electric
25 utilities for capital?

1 MR. COFFMAN: I don't know that it
2 would, particularly AmerenUE. I think the evidence
3 is pretty strong that they -- their off-system
4 sales mitigate their fuel cost already to a certain
5 degree.

6 But if you feel like it's necessary
7 to have a fuel adjustment clause, I think you can
8 bring things back into balance by putting more of
9 those costs into the base rates and limiting what
10 costs go into the fuel adjustment clause and
11 increasing the amount that's shared.

12 CHAIRMAN KENNEY: And then to your
13 last point about making adjustments to the ROE to
14 reflect the reduced risk by virtue of having an
15 FAC, does anybody have any evidence that helps us
16 quantify that? I know you said we've never done
17 it.

18 MR. COFFMAN: Some states have done
19 it. The Illinois Commerce Commission has -- their
20 staff when they had riders added in the past, they
21 would quantify a specific amount and make a
22 specific downward adjustment. But the problem --

23 CHAIRMAN KENNEY: Will there be some
24 evidence in this case that would allow us quantify,
25 somebody that's going to say --

1 MR. COFFMAN: Perhaps. I'm not aware
2 that it's in -- that there's a quantification yet
3 in prefiled testimony, but we might get into that.
4 The problem is that once something becomes -- once
5 you add a mechanism, it tends to become the status
6 quo. And, you know, as you said, almost every
7 other state has a fuel adjustment clause. They
8 point, well, everyone's got it now.

9 But there was never that -- there was
10 never that corresponding tilt, and it's a growing
11 problem across the country. These riders just
12 proliferate. They seem to add even more and more
13 as they go. The state of Indiana, for example, now
14 has more than 50 percent of the costs flowing
15 through mechanisms in between rate cases. Other
16 states are moving that direction, too. I think
17 it's a real mismatch, and I think it's against the
18 public interest.

19 Either that or you have to go to some
20 other system than cost of service regulation, but
21 that's the system that's worked really well, and
22 just hope that you would recognize the fact that
23 every special exception and deferral and surcharge
24 tilts it, makes it harder to bring it back to fair.

25 CHAIRMAN KENNEY: Thank you.

1 JUDGE WOODRUFF: Commissioner Stoll?

2 COMMISSIONER STOLL: No questions at
3 this time.

4 JUDGE WOODRUFF: Commissioner Hall?

5 COMMISSIONER HALL: No questions.

6 JUDGE WOODRUFF: Thank you. MEGC.

7 MR. LOWERY: Mr. Chairman, while Mr.
8 Woodsmall gets set up there, I just want to make
9 sure. Maybe I didn't enunciate very well. The
10 actual statistic is 98 percent of all electric
11 utilities have fuel adjustment clauses.

12 CHAIRMAN KENNEY: Thank you.

13 MR. ALLISON: I'm pretty sure the
14 Chairman heard that the first time.

15 MR. WOODSMALL: Thank you. David
16 Woodsmall for MEGC. Mindful of the fact that we're
17 going to have opening statements before every issue
18 and that I'm several parties down the line and that
19 you've heard most of this, I'm going to be very,
20 very brief.

21 One of the first things that I wanted
22 to point out was Ameren's rate case history, and
23 you've seen this before. Ameren since it started
24 filing rate cases again in 2007 has increased rates
25 by \$1.13 billion. That includes their proposed

1 increase here. So that would amount to a
2 57 percent increase.

3 Something that I want you to be aware
4 of is that, on top of that, they've had 17 fuel
5 adjustment clause increases, for an increase of
6 657 million, so 58 percent more than just what is
7 in base rates. You can see that graphically here.
8 You can see their rates going up significantly.

9 Something Mr. Allison hit on, why is
10 that relevant? 57 percent rate increase,
11 \$657 million in fuel adjustment clause. Well, as
12 Mr. Allison pointed out, average weekly wages for
13 people paying these bills have only gone up
14 10.51 percent. Consumer Price Index has only gone
15 up 12.35 percent. So certainly when Ameren
16 proposes to raise rates 57 percent, that is
17 relevant.

18 The other thing that I wanted to
19 point out to you, and you've seen this before, is
20 Ameren's overearnings. Ameren since the last case
21 has earned well, well in excess of their authorized
22 return. And why do I mention that? Why is that
23 relevant here? Well, the Supreme Court has told
24 you it's relevant. The Supreme Court in the UCCM
25 case said the Commission has the authority to

1 determine the rate to be charged. In so
2 determining, it may consider past excess recovery
3 insofar as this is relevant to its determination of
4 what rate is reasonable to provide a just and
5 reasonable return in the future.

6 Supreme Court has told you, you can
7 look at these overearnings. You can't reach into
8 their pocket and take those past overearnings, but
9 you can consider them.

10 Well, how should you consider them in
11 this case? These amortizations that they're asking
12 for is a great example of where you can consider
13 them. Now, I want to make sure you understand what
14 an amortization is. An amortization here is Ameren
15 trying to go back to this past period where they
16 overearned, take costs from that period and pull it
17 into this case.

18 So what is the effect of that? Well,
19 the effect of an amortization is to inflate
20 earnings from the past because you no longer have
21 this cost there, it inflates past earnings, it
22 increases future rates.

23 So when the Supreme Court tells you
24 you can and should consider past overearnings, this
25 is what they meant. What we have in this case is

1 \$33 million worth of amortizations taken from a
2 time period when they were overearning, inflate
3 those past overearnings and bring \$33 million a
4 year into this case.

5 What happens to the past overearnings
6 in you do that? Well, as you can see from
7 Mr. Meyer's testimony, the past overearnings
8 remain. The bars have shifted down slightly, but
9 they still have overearnings. Clearly the earnings
10 in the past were sufficient to cover all these
11 amortizations.

12 That was all my prepared statements,
13 but I want to hit on a couple things that haven't
14 been asked about. The first thing is, the Chairman
15 asked, well, what can we do? We hear all this
16 evidence about the ratepayers and wages and utility
17 rates going up quickly. What can we do?

18 Well, Ameren gave you part of the
19 story. Their part of the story was there's not
20 much you can do. That's a question for the General
21 Assembly. You have to allow these costs. And I
22 agree with that this much (indicating).

23 There's another question, though.
24 Certainly you have to allow the mandatory things.
25 When they put in a power plant, when they make

1 environmental improvements, you have to allow that.
2 But there are discretionary things, and this case
3 is nothing but discretionary things. The mandatory
4 things have been covered. They're in Staff's case.
5 The discretionary things are what this case is
6 about.

7 You look at the difference in the
8 reconciliation. Ameren's at \$200 million. Staff's
9 at 80 million. \$120 million difference between
10 Staff and Ameren. Well, let's just look at this.
11 Of that, 70 million is in return on equity. Of
12 that, another \$40 million is in deferrals.
13 Discretionary things. You take away \$110 million
14 of discretionary increases, you have Ameren and
15 Staff right at the same number.

16 So you can consider those -- the
17 effect on ratepayers, and you should consider it.
18 And if you do that and get rid of these
19 discretionary items, you'll find there's not a lot
20 of difference between the parties here.

21 Now, when we've talked about ROE,
22 other states have done this. North Carolina has a
23 decision, and I'll provide it in my brief. North
24 Carolina specifically says, we need to balance
25 this. We need to consider this. And you can go to

1 a lower ROE. Evidence is there that it's
2 reasonable. Hawaii has. Hawaii recently gave
3 a 9.0 ROE. Connecticut gave a 9.17 ROE.

4 So certainly at 10.4 like Ameren is
5 seeking, 60 basis points above what they got last
6 time, that's not reasonable. So utilize your
7 discretionary authority and get rid of these high
8 ROEs. That will keep in mind what ratepayers can
9 pay and bring these parties closer together.

10 Another question that the Chairman
11 asked a couple times now is about the fuel
12 adjustment clause and whether Ameren would be
13 disadvantaged, and I would tell you they wouldn't.
14 If you go back and look, and I'm sure we can
15 develop the evidence now in this case, but when
16 Ameren was given an FAC in this case, rating
17 agencies didn't acknowledge that. They didn't
18 upgrade Ameren's credit rating. There was no
19 accounting for that.

20 So if they didn't upgrade the credit
21 rating when you gave them the FAC, why does anybody
22 believe they would be downgraded if you took it
23 away? And even if it was, even if Ameren is
24 downgraded because of the FAC, credit goes down,
25 ROE will go up. Ratepayers are the ones stuck

1 holding that bag.

2 So no, I don't believe Ameren will be
3 disadvantaged by getting rid of the FAC or changing
4 the sharing terms. So that was all I had.

5 JUDGE WOODRUFF: Questions?

6 CHAIRMAN KENNEY: No questions.

7 COMMISSIONER STOLL: No questions.

8 COMMISSIONER HALL: No questions.

9 MR. WOODSMALL: Thank you.

10 JUDGE WOODRUFF: Division of Energy?

11 MR. KNEE: Judge, I'll defer my
12 remarks to the issue-specific openings.

13 JUDGE WOODRUFF: Wal-Mart's not here.
14 O'Fallon and Ballwin.

15 MR. CURTIS: Thank you. If it please
16 the Commission? My name is Leland Curtis. I'm the
17 attorney for the cities of O'Fallon and Ballwin. I
18 might just say that our firm, in addition to being
19 special counsel here at the PSC, we are the general
20 city attorneys for O'Fallon and Ballwin, and we
21 also represent about 30 other municipalities in the
22 St. Louis County and St. Charles area. So we are
23 very involved in municipal law and municipal -- the
24 impacts that rate cases have on these
25 municipalities. We appreciate you hearing this

1 case in this context.

2 I would say that even though it's
3 just O'Fallon and Ballwin here at this time, there
4 are a number of other cities that we represent and
5 some we do not represent, a total of about 315
6 municipalities served by Ameren in its service
7 area, and a number of them are looking at interest
8 with what happens with this particular
9 streetlighting case.

10 The stakes are high actually. Ameren
11 has two streetlighting tariffs, the 5M, which is
12 company-owned streetlighting facilities, and the
13 other is 6M, which is a special category for
14 customer-owned streetlights. In the first case
15 Ameren owns the streetlights, and in the second
16 case the customer would own the streetlights.

17 O'Fallon and Ballwin both are in the
18 5M category. They do not own any of the
19 streetlights in their municipalities. O'Fallon has
20 about 4,400 streetlights of a variety of kinds.
21 Ballwin has a little over 2,100. O'Fallon pays
22 annually approximately a million dollars to Ameren
23 just for streetlighting service alone. Ballwin
24 pays 500,000 to Ameren just for its streetlighting
25 services.

1 If Ballwin and Ameren were able to
2 migrate to the 6M class that is the customer-owned
3 streetlight facilities and be charged under the 6M
4 rates, in O'Fallon's case its million dollar annual
5 streetlighting bill that it pays to Ameren would go
6 down to \$180,000, a savings of \$820,000.

7 In Ballwin's case, its \$500,000
8 annual streetlighting bill would go down to \$94,000
9 a savings of over 400,000. Those are significant
10 numbers for these cities. We ask you to consider
11 them carefully. And for each one of these cities,
12 as I say, there's about 315 other municipalities
13 served by Ameren. Not all of them have
14 streetlights, but most of them do, and most of them
15 really would probably like to have the opportunity
16 to be served under the 6M rate category.
17 Substantial savings are to be found there.

18 When O'Fallon and Ballwin early last
19 year approached Ameren with regard to how can we
20 move to the 6M rate, we would like to, and they
21 said, well, you must issue a termination notice
22 under the termination paragraph which we've pointed
23 out in our testimony under the 5M rate. And under
24 that termination policy, we would have to pay --
25 the cities would have to pay \$100 for every lamp,

1 every light fixture. So for O'Fallon it would be
2 over 4,400 times \$100. In Ballwin's case it's
3 about 2,100, a little over that.

4 And then Ameren would go in and
5 remove all of those light fixtures, all those
6 streetlights, and obviously they have to pay for
7 the cost of removing all those streetlights.
8 They'd have to pay for the cost of storing or
9 disposing of those streetlights that they would
10 actually remove.

11 And these are streetlights, in both
12 cases in the cities, the vast majority have been in
13 place over ten years, and the cities have been
14 paying over and over in these 5M rates for these
15 streetlights. They have substantially depreciated,
16 and the cities are willing to pay fair market value
17 for them.

18 And when we told Ameren that, Ameren
19 said no, we're not going to sell those to you.
20 We're going to remove them. I mean, it's a little
21 like Aesop's fable, The Dog and the Manger.
22 They're our lights and we're not going to sell them
23 to you, even though it would be fair market value.
24 We're not asking them for free. We just want to
25 pay fair market value.

1 Again, I'd point out, Chairman Kenney
2 asked, how can we in the context of a rate case
3 help out consumers? Well, there are 82,000
4 residents in O'Fallon, there are 30,000 in Ballwin,
5 and there are tens of thousands in the other
6 municipalities. They're all taxpayers, and they
7 all pay the city the taxes that go then to pay
8 streetlights and other things.

9 If the cities can save money on these
10 streetlighting rates, it will inure and trickle
11 down -- pardon the phrase -- to all of the
12 taxpayers and the residents in the city.

13 I was trying to figure out an analogy
14 other than Aesop's fable and The Dog and the
15 Manger, and the best one I could come up with
16 really would be a boy and his football. You know
17 all know the story. It's a neighborhood side lot,
18 pickup football game. One kids brings the
19 football. His team is doing very badly, is getting
20 slaughtered by the other team. Midway through the
21 game he doesn't like a particular ruling so he
22 says, okay, I'm taking my football and I'm going to
23 go home.

24 Now, there's no commissioner in this
25 neighborhood sand slot, side lot pickup football

1 game, and it's his ball. Of course he can do it.
2 He'll be known as a jerk and a kid who is a sore
3 loser and a spoilsport, but there's really not much
4 recourse.

5 Let's take a look at this case, and
6 in this case we move to a different playing field.
7 The playing field is right here in this hearing
8 room. It's not a sandlot or a side lot in a
9 neighborhood. And there is a commissioner of
10 football, and it's you. You are the commissioners,
11 and you have the authority to decide whether
12 Ameren's actions and Ameren's tariff under
13 termination are reasonable.

14 And we're suggesting, and we have
15 clear statutory authority, that Ameren's position
16 is not reasonable. We think the facts would show
17 it's not reasonable. Why would they insist on
18 going into O'Fallon and Ballwin on a termination
19 notice and stripping out 6,500 streetlights with us
20 paying \$100 per each one, taking the -- paying the
21 cost to remove those lights and then paying the
22 cost to dispose of them or store them, as opposed
23 to allowing the cities to purchase those lights at
24 fair market value?

25 Ameren doesn't have to do a thing.

1 They don't have to touch a light. They don't have
2 to pay to have anything removed. They can simply
3 just transfer for fair market value. That's what
4 we're asking the Commission to order Ameren to do.
5 Their termination tariff is unreasonable and
6 unjust, and this Commission has the authority very
7 clearly to determine that paragraph 7 entitled
8 Termination, tariff sheet 48.5 of Ameren's 5M
9 company-opened streetlighting tariff is unjust and
10 unreasonable.

11 Where does that authority come from?
12 Section 393.145 sub 5, RSMo, which provides in
13 pertinent part, and I'm quoting, and I'm doing
14 ellipses because I'm sectioning out the applicable
15 statute, statutory provisions, whenever the
16 Commission shall be of the opinion after a
17 hearing -- this is a hearing -- that the acts or
18 regulation of such persons or corporations are
19 unjust or unreasonable.

20 The regulations are the tariff,
21 Ameren's termination tariff. The acts are Ameren's
22 refusal to negotiate in good faith to sell its
23 substantially depreciated streetlights to the
24 cities at fair market value. Those are
25 unreasonable positions to take.

1 And if the Commission finds that that
2 tariff and Ameren's actions are unreasonable,
3 continuing with a statute, it says, the Commission
4 shall determine and prescribe the just and
5 reasonable acts and regulations to be done and
6 observed.

7 This Commission has full authority to
8 do this. They're saying you don't have that
9 authority. You absolutely do. And I was -- I
10 appreciated Mr. Thompson pointing out to you, the
11 Commission's duty is to protect the public from the
12 monopoly power of the utility while giving that
13 utility the right to earn a fair return on its
14 investment.

15 You are the referees. You are the
16 judges. You are the ones to determine whether
17 Ameren's actions are reasonable or not. We suggest
18 they are unreasonable. And in the context of this
19 case, the unique part about this is this is pretty
20 much revenue neutral. Ameren would be -- Ameren
21 would not be incurring any cost to remove the
22 streetlights, would not be incurring any cost to
23 store or dispose of them. Ameren would be getting
24 fair market value for its streetlights from the
25 cities.

1 We're not asking for any rate
2 increase, and we're not addressing return on equity
3 or the AAO, any of the AAOs. We are simply asking
4 for that relief. We think the Commission has that
5 authority in this case, and we would urge you.

6 We will be later presenting two
7 witnesses. One is Bob Kuntz. He's the city
8 administrator for City of Ballwin. And Steve
9 Bender is the director of public works for
10 O'Fallon, and they have filed -- we have filed
11 direct and surrebuttal testimony for them. They
12 will be appearing later next week, I believe if the
13 schedule stays intact.

14 I know that the commissioners, the
15 ones who attended some of the local hearings in the
16 St. Louis and St. Charles area probably heard from
17 a number of officials from the cities on this
18 issue, and we appreciate very much your hearing us
19 out and supporting our position. Thank you.

20 JUDGE WOODRUFF: Questions?

21 CHAIRMAN KENNEY: Yeah. Mr. Curtis,
22 thank you for being here with us today. Let me
23 borrow your analogy. Could we command that little
24 boy to give us his ball and then hand it over to
25 the remaining kids that are playing? You're saying

1 we have the legal --

2 MR. CURTIS: I don't think so.

3 That's the difference, Commissioner Kenney, and
4 you're exactly right to point that out. That is
5 the -- in that situation, unfortunate as it is,
6 it's the kid's ball. He can go. He can take it.

7 In our case, however, these
8 streetlights are not uniquely the property of
9 Ameren. These streetlights are property that have
10 been dedicated to the public use, and that's the
11 difference. Ameren cannot dispose of property that
12 it has committed to the public utility purpose
13 without getting approval from this Commission. The
14 Commission does it all the time. They come in when
15 they want to sell property. You have to approve
16 it.

17 Similarly with a disposition where
18 they're simply taking it out of service, out of
19 spite perhaps, and saying no, you're going to have
20 to go buy your own streetlights, we're not going to
21 sell you these, that's the difference, Chairman
22 Kenney. It's not uniquely their property. The
23 Commission has superintending authority over all
24 property that is dedicated to the public service,
25 which is what the streetlights are.

1 CHAIRMAN KENNEY: So our ruling, our
2 order would need to first determine that the
3 company-owned tariff, 5M tariff is unjust and
4 unreasonable to the extent that it allows Ameren to
5 take those -- that property out of service rather
6 than selling it to you?

7 MR. CURTIS: Offering it, yes. Yes.
8 And their -- their action, not only the termination
9 paragraph 7 that I referenced, but also their
10 action in saying, no, we're not even going to
11 negotiate with you.

12 CHAIRMAN KENNEY: And are your
13 witnesses going to offer testimony as to the price
14 differential between the cities buying their own
15 versus offering fair market value to Ameren?

16 MR. CURTIS: We've tried to find some
17 of that, and I think we will have some of that
18 information, but it is a substantial difference.
19 And it really -- it is a truly uneconomic position.
20 You know, why would they force the city to go
21 out -- why would they force themselves to spend the
22 money to remove 6,500 streetlights and then store
23 them and then require the cities to go out and buy
24 new or substantially refurbished streetlights, to
25 come in and then at city expense pay for them?

1 This is -- this is what Mr. Thompson
2 was saying about the potential abuse that
3 monopolies have when they can force people and
4 customers to stay in their particular tariff
5 category. We want to move to the 6M. Obviously
6 there are substantial savings for the cities and
7 the citizens of these cities.

8 CHAIRMAN KENNEY: Thanks for your
9 time. Thank you.

10 JUDGE WOODRUFF: Commissioner Stoll?

11 COMMISSIONER STOLL: I do have a
12 question. Commissioner Hall may also. I was here
13 for the last Ameren rate case, and I don't recall
14 if the cities made such a statement last time or
15 not. Not that it matters, but --

16 MR. CURTIS: We did not at that time.

17 COMMISSIONER STOLL: Could you tell
18 me a little bit about why possibly? Is this a --
19 so this 5M tariff has been in place for some time?

20 MR. CURTIS: Why it has, and the 6M
21 also. It just had not occurred to the cities that
22 this would be a possibility. Frankly, Mr. Bender,
23 the public works director for O'Fallon, was the one
24 who looked at it and said we could save an awful
25 lot of money if we have our own lights. Why

1 couldn't we just buy in situ, as we say, in place
2 the streetlights that Ameren already has and we've
3 been paying for substantially under the 5M rates
4 for years and years, well over ten years.

5 COMMISSIONER STOLL: Do you have any
6 idea how many cities that say your firm represents
7 that might be in the 6M category?

8 MR. CURTIS: I think the only one
9 we're aware of is Clayton. We do represent the
10 City of Clayton. And we're looking for the data on
11 this, but it's my recollection that the City of
12 Clayton purchased all of its streetlights from
13 Ameren a number of years ago, maybe 20 or even 30
14 years ago. Ameren did that at that time. But
15 somehow that policy window has shut and they no
16 longer want to do that.

17 COMMISSIONER STOLL: Okay. That's my
18 only questions. Thank you.

19 JUDGE WOODRUFF: Commissioner Hall?

20 COMMISSIONER HALL: No questions at
21 this time.

22 JUDGE WOODRUFF: Thank you,
23 Mr. Curtis. I don't believe electrical workers are
24 here. The retailers, looks like they're not here.
25 NRDC, Renew Missouri and Steelworkers are not here.

1 United for Missouri want to make an opening?

2 MR. LINTON: No opening statement,
3 your Honor.

4 JUDGE WOODRUFF: Then we're done with
5 opening statements, and by chance it's exactly
6 12 o'clock noon. So it's time for lunch, and we'll
7 come back at one o'clock with Mr. Moehn on the
8 stand for regulatory policy.

9 (A BREAK WAS TAKEN.)

10 JUDGE WOODRUFF: We're back from
11 lunch and ready to get started on the first
12 issue. Before we do that, Ms. Tatro, you had
13 something to add?

14 MS. TATRO: I just wanted to add to
15 the list of issues that had been resolved in the
16 partial stipulation. I think I failed to indicate
17 Issue 15B, which is the Callaway life extension
18 costs. Those will also be included. I apologize
19 for the omission.

20 JUDGE WOODRUFF: Thank you.

21 MR. LOWERY: Your Honor, there also
22 this morning, I think somebody might have said
23 something that suggested that the AMS issues have
24 not been resolved, and they've been resolved as
25 well. I think we did mention that this morning,

1 but I just wanted to clarify that. I don't know
2 who said it, but --

3 MR. DOWNEY: Diana mentioned in her
4 opening statement that we had a witness that
5 addressed it, but in that opening statement she
6 said she thought it had settled.

7 MR. LOWERY: Okay. I might have
8 misheard.

9 JUDGE WOODRUFF: I'd like to get some
10 more resolution also for the Commissioners' benefit
11 as to what the remaining schedule will be. It's my
12 understanding that we will be -- first of all,
13 weather normalization is also set for tomorrow.

14 MR. THOMPSON: If I could approach,
15 Judge.

16 JUDGE WOODRUFF: You may.

17 MR. THOMPSON: I made a handy-dandy
18 schedule that I think will show you where we're
19 going.

20 JUDGE WOODRUFF: Okay. So it shows
21 the policy finishing up today, weather
22 normalization and income tax tomorrow.

23 MR. THOMPSON: Yes, sir.

24 JUDGE WOODRUFF: Any idea on how long
25 the issues for tomorrow would take?

1 MR. THOMPSON: Other than the fact
2 that we'll finish them by five, I don't know.

3 JUDGE WOODRUFF: Is it something we
4 think is going to take two hours or four hours?

5 MS. TATRO: I don't think they'll
6 take all day, and some of the other parties have
7 said they would like time to have discussions about
8 further settlement. So our thought is we could
9 finish that perhaps even in the morning and then
10 have the afternoon to do that.

11 JUDGE WOODRUFF: I had some questions
12 about maybe starting late, like 9:30 or 10 o'clock
13 tomorrow.

14 MR. DOWNEY: That would be
15 preferable.

16 CHAIRMAN KENNEY: Ten.

17 MR. LOWERY: I think that would work.
18 I don't know exactly how long the income tax is
19 going to take on your side. I don't know if you
20 know. But I think -- I think weather normalization
21 will not take that long, and I think a half day or
22 half day plus of income tax is probably plenty.

23 MR. THOMPSON: Of course, that
24 doesn't show the questions on the revenue
25 requirement Stipulation & Agreement, which we were

1 indicated we'd be doing tomorrow, too.

2 JUDGE WOODRUFF: Well, that may be up
3 in the air yet also.

4 MR. THOMPSON: Okay.

5 JUDGE WOODRUFF: It depends upon when
6 we actually get the Stipulation & Agreement and how
7 quickly.

8 MS. TATRO: And the Stipulation &
9 Agreement may not be filed until -- I mean,
10 obviously it's not going to be filed until after
11 we're done with the witnesses today because I
12 haven't had an opportunity to file it. I think I
13 only have three parties left. Hopefully before
14 five, but probably closer to five than not.

15 JUDGE WOODRUFF: Thank you. And on
16 Friday we have Mr. Wright?

17 MR. LOWERY: Mr. Reed.

18 JUDGE WOODRUFF: Reed. Is he the
19 only witness that we will be taking?

20 MR. LOWERY: Right. And because of
21 his travel schedule, I would ask that we -- could
22 we start at ten o'clock on Friday?

23 JUDGE WOODRUFF: That would be fine.
24 I'll share this with all the Commissioners and give
25 everybody an idea what we're facing here. Anything

1 else before we call Mr. Moehn to the stand?

2 Come forward.

3 MS. BAKER: Before we begin, were we
4 going to do mini openings on each issue?

5 JUDGE WOODRUFF: I'm sorry,
6 Mr. Moehn. Can you wait or have a seat there, if
7 you're comfortable.

8 All right. We will do mini openings
9 on the first issue on regulatory policy and
10 economic considerations beginning with Ameren.
11 Any opening for you?

12 MS. TATRO: I think this is going to
13 be the shortest mini opening for Ameren Missouri.
14 I think the reality is that the company has put
15 forth a substantial case that illustrates why it
16 needs the dollar amounts that have been requested
17 in this case.

18 It has demonstrated that it's
19 concerned about the impact of that rate increase
20 upon customers by the extension of things such as
21 the MEEIA low income exemption, the efforts
22 undertaken to control O&M costs and to ensure that
23 the costs that we're using to make up the revenue
24 requirement are necessary for the provision of safe
25 and adequate service.

1 Thank you.

2 JUDGE WOODRUFF: Thank you. For
3 Staff?

4 MR. THOMPSON: Thank you, Judge. I
5 will also be brief. From the questions that we had
6 heard from the Commission, it seems apparent that
7 the Commissioners are well aware that customers in
8 Ameren Missouri's service territory are largely
9 struggling and that recovery from the recession of
10 2008 has been incomplete in Missouri. This is the
11 sixth rate increase request since 2006, and as
12 Mr. Woodsmall pointed out very eloquently, the
13 issues that remain in front of you are
14 discretionary. Please keep in mind the eroding
15 ability of ratepayers to pay these costs.

16 Thank you.

17 JUDGE WOODRUFF: Public Counsel?

18 MS. BAKER: Thank you. Throughout
19 this case Ameren has and will take every
20 opportunity to bring their economic conditions to
21 the attention of the Commission. Public Counsel
22 would say that if the Commission looks at the
23 economic conditions of the utility, it's only just
24 and reasonable that the economic conditions of the
25 customers of Ameren in Missouri also be looked at

1 by the Commission. At the end of the day,
2 customers are the ones who must pay the costs from
3 this rate case.

4 You've heard that Ameren understands
5 that rate increases are unpopular, but it isn't
6 just that they are unpopular. Rate increases have
7 a direct impact on the customer and their
8 communities. Customers budget but yet still find
9 themselves asked to absorb increasing costs while
10 their income is stagnant or decreasing.

11 The evidence shows that rates -- that
12 while rates are going up, they're going up much
13 faster than wages. In fact, earlier you heard that
14 Ameren's rates have increased 43 percent while
15 wages have declined by 22 percent.

16 The Commission has many ways to
17 address this through keeping economic
18 considerations in mind when deciding the myriad of
19 discretionary issues that are being brought before
20 it. Approving the recovery of prudent costs may
21 not be discretionary, but the items such as return
22 on equity, trackers, fuel adjustment mechanisms are
23 most certainly discretionary.

24 The demand for just and reasonable
25 rates implies that rates are affordable for

1 customers, and Public Counsel urges the Commission
2 to strongly consider the affordability of service,
3 rate impacts and rate continuity as it examines
4 this case. Thank you.

5 JUDGE WOODRUFF: Thank you. For
6 MIEC?

7 MR. DOWNEY: Judge, we have no
8 witness on this issue, and I think everything that
9 we have to contribute by way of opening statement
10 on this Ms. Vuylsteke has already delivered.

11 JUDGE WOODRUFF: Thank you.
12 Consumers Council?

13 MR. COFFMAN: I would simply concur
14 with Staff and OPC's openings.

15 JUDGE WOODRUFF: Looking around the
16 room, the only attorney I see left is for United
17 for Missouri.

18 MR. LINTON: I have no opening
19 statement.

20 JUDGE WOODRUFF: All right. Then
21 we'll begin with examination of Mr. Moehn. And
22 your witness, Ameren.

23 MS. TATRO: Thank you.

24 MICHAEL MOEHN testified as follows:

25 DIRECT EXAMINATION BY MS. TATRO:

1 **Q. Can you state your name and business**
2 **address for the record, please.**

3 A. Michael Moehn, 1901 Chouteau Avenue,
4 St. Louis, Missouri.

5 **Q. And are you the same Michael Moehn**
6 **that prefiled direct and surrebuttal testimony in**
7 **this case?**

8 A. Yes, I am.

9 **Q. Do you have any additions or**
10 **corrections to make to your testimony?**

11 A. I do not.

12 **Q. If I were to ask the same questions**
13 **that are contained within the prefiled testimony,**
14 **would your answers be the same?**

15 A. Yes, they would.

16 MS. TATRO: I move for admission of
17 Exhibit 28 and 29 and tender the witness for
18 cross-examination.

19 JUDGE WOODRUFF: 28 and 29 have been
20 offered. Any objections to their receipt?

21 (No response.)

22 JUDGE WOODRUFF: Hearing none, they
23 will be received.

24 (AMEREN EXHIBIT NOS. 28 AND 29 WERE
25 MARKED FOR IDENTIFICATION AND RECEIVED INTO

1 EVIDENCE.)

2 JUDGE WOODRUFF: Cross-examination,
3 we begin with United for Missouri?

4 MR. LINTON: No questions, your
5 Honor.

6 THE WITNESS: Do I need to be sworn
7 in?

8 JUDGE WOODRUFF: Yes, you certainly
9 do. Thank you for noticing that before we got too
10 much further along.

11 (Witness sworn.)

12 JUDGE WOODRUFF: And just to clarify,
13 the questions your attorney asked you would be the
14 same --

15 THE WITNESS: Yes, they would. Yes.

16 JUDGE WOODRUFF: -- under oath?

17 THE WITNESS: Yes.

18 JUDGE WOODRUFF: Does that take care
19 of it for everybody? And again, thank you for
20 noticing.

21 THE WITNESS: No problem.

22 JUDGE WOODRUFF: All right. For
23 cross-examination, United for Missouri?

24 MR. LINTON: I have no questions,
25 your Honor.

1 JUDGE WOODRUFF: Okay. Looks like
2 Consumers Council?

3 MR. COFFMAN: Yes, I have a few.
4 Would it be a preference that I come to the podium?

5 JUDGE WOODRUFF: Why don't you come
6 up to the podium. It's easier to hear you.

7 CROSS-EXAMINATION BY MR. COFFMAN:

8 Q. Good morning, Mr. Moehn.

9 A. Good afternoon.

10 Q. I'm John Coffman representing
11 Consumers Council. I'll start with just some very
12 basic questions, make sure we're on the same
13 page --

14 A. Sure.

15 Q. -- regarding regulatory policy. You
16 would agree with me, would you not, that cost of
17 service regulation in Missouri does not allow for
18 retroactive ratemaking?

19 A. Yes, I would.

20 Q. And what that means is that utility
21 does never -- is not generally allowed dollar per
22 dollar recovery for its expenses? In other words,
23 it has to rely on a reasonable level of rates going
24 forward?

25 A. Okay.

1 Q. You agree with that? And an
2 exception to that would be a deferral of some sort,
3 would you --

4 A. I'm sorry. I'm not following.

5 Q. An exception as far as I said dollar
6 per dollar, an idea that some costs may be brought
7 back from the past and carried forward for
8 consideration for possible recovery in the future;
9 is that your understanding how a deferral might
10 work, a regulatory deferral?

11 A. Correct. I mean, but the
12 definition -- I'm not an attorney, but retroactive
13 ratemaking, the idea is going back and changing
14 past rates based on past performance. Rates can
15 only be set prospectively, is at least my
16 understanding of it.

17 Q. And you -- you mentioned in your
18 testimony on page 13 that --

19 A. The direct?

20 Q. Of your direct testimony, lines 19,
21 to 23 there, that because of the way the rates are
22 set in Missouri, it's impossible for Ameren
23 Missouri to recover the full cost of its capital
24 investment in rates.

25 Now, was it -- was it impossible over

1 **the last couple of years for Ameren to recover its**
2 **investments in rates?**

3 A. We've made great progress closing
4 that regulatory lag through a lot of hard work and
5 managing the overall costs of business, and so,
6 yes, we've been closing that -- closing that gap.
7 But I think what I'm speaking to here is that, as
8 you know, plant goes into service in between rates,
9 it begins to be depreciated, and so there's no
10 ability to get that recovered.

11 **Q. Regulatory lag actually worked in**
12 **Ameren Missouri's benefit over the last couple of**
13 **years, did it not?**

14 A. The last couple of years, yes.

15 **Q. With the earnings that were above**
16 **what was expected. And during this time you note**
17 **on page 15 of your testimony that there was**
18 **non-fuel O&M cost that were reduced, by your**
19 **testimony, it was by \$67 million per year; is that**
20 **correct?**

21 A. Yes, it is.

22 **Q. And did that involve some layoffs or**
23 **eliminating some employees?**

24 A. We did a voluntary separation plan a
25 number of years ago, and then the rest has really

1 been we have an aging work force, so we're really
2 trying to take advantage as the aging work force
3 turns over, that we are very, very thoughtful about
4 what needs to be replaced and where, where we can
5 reduce cost, recognizing these increases are
6 extremely difficult on people.

7 **Q. And would Ameren Missouri think it's**
8 **a good idea to have a regulatory deferral that took**
9 **the benefit from those layoffs in the past and put**
10 **that into a deferral and carry those forward to**
11 **this case?**

12 A. Again, customers are going to enjoy,
13 you know, these lower costs. We're rolling them
14 into rates as part of this process.

15 **Q. But would that be the type of thing**
16 **that could be recorded in a regulatory deferral and**
17 **carry forward, the layoffs or productivity gains,**
18 **so that we could go retroactively and get the**
19 **benefit for the past period --**

20 A. I'm not --

21 **Q. -- in between rate cases?**

22 A. I'm not following you.

23 **Q. Well, it would be the idea, there**
24 **would be sort of the flip side of a deferral that**
25 **involved increased cost, but it would actually**

1 capture reduced costs in the past and bring them
2 forward for consideration in a rate case. Would
3 that tend to reduce your -- would that potentially
4 reduce your overall revenue requirement in this
5 case if we did that?

6 A. I think these are reducing our
7 overall revenue requirement today.

8 Q. But would it be potentially decreased
9 even further if you were to capture those
10 retroactive reductions in the past through some
11 type of an Accounting Authority Order?

12 A. Again, what you're proposing --

13 Q. Wouldn't likely be something you
14 would propose?

15 A. No, it would not be.

16 Q. What's your annual salary, Mr. Moehn?

17 A. \$500,000.

18 Q. And that's not your entire
19 compensation package, though?

20 A. That's correct. That's just my
21 salary.

22 Q. I thought I read somewhere that you
23 had about a million dollars in compensation. Does
24 that include --

25 A. Yeah, short-term and long-term

1 incentive comp as well, yes.

2 **Q. What would you consider your total**
3 **compensation package to be valued at?**

4 A. Probably a million two or a million
5 three.

6 **Q. Is it your understanding that most of**
7 **that is included in the base rates or what part is**
8 **agreed to be included in --**

9 A. The only -- to my understanding, the
10 only thing that's included is my base salary.

11 **Q. Just the 500,000?**

12 A. The 500,000.

13 **Q. Did you attend any of the local**
14 **public hearings the Commission held in this case?**

15 A. I did.

16 **Q. How many of them did you go to?**

17 A. I attended two of them. I also read
18 the transcripts of the ones that I was not able to
19 attend as well.

20 **Q. What public hearings did you go to?**

21 A. The one in Sunset Hills and the one
22 in St. Charles.

23 **Q. Well, and I'm sure you heard some**
24 **folks telling their personal stories and hardships**
25 **about how increased electric rates have impacted**

1 **their budgets?**

2 A. Correct. Yes.

3 **Q. And sometimes even asking, you know,**
4 **for someone to answer their questions, you know,**
5 **why? What can be done?**

6 A. Uh-huh.

7 **Q. I just wondered, is there anything --**
8 **if you had the opportunity to address them now,**
9 **what would you say about it?**

10 A. Yes, certainly. I mean, and I do
11 address them. I talk to customers all the time
12 about this, and I certainly empathize with the
13 situation. You know, I -- obviously this process
14 isn't enjoyable. I don't like raising rates on
15 customers. I know it's creating hardships.

16 But at the same time I tell them
17 electricity is incredibly important to this
18 economy. It's incredibly important to citizens.
19 People's lives have become, I mean, intertwined
20 with electricity. You know, you see it through you
21 have a storm or an outage and the chaos it creates.

22 So we have rising expectations in
23 terms of the digital world that we live in today,
24 and so, unfortunately, it's taking more and more
25 costs to make that happen through mandates, through

1 renewable energy standards, through environmental
2 controls, and so all of that is becoming more
3 expensive unfortunately.

4 **Q. And I assume in your interactions**
5 **with other businesses in the St. Louis community**
6 **and in the service territory, you talked with other**
7 **businesses that have had to absorb a lot of costs**
8 **since the recession. And so do you acknowledge**
9 **that other businesses that are in this area have**
10 **had to eat a lot of costs related to the economic**
11 **downturn?**

12 A. Right. Again, as we just had the
13 discussion, we were trying to do -- where we can
14 control costs, we are do-- I'm doing absolutely
15 everything I possibly can to make sure the product
16 stays as affordable as possible.

17 And again, I know there was a
18 discussion this morning about the relevance of
19 where our rates are, and 24 percent below the
20 national average, the cheapest investor-owned
21 utility in the state of Missouri.

22 I think it does matter to stay
23 competitive. I am trying do everything I can to
24 make sure we keep this product as affordable as
25 possible, recognizing that I still have an

1 obligation to serve.

2 Q. And just one more question. This
3 relates to the fuel adjustment clause. Would you
4 concede or agree with me that Ameren Missouri has
5 at least some control over the costs that flow
6 through the fuel adjustment clause?

7 A. Which costs?

8 Q. Well, tell me which costs you think
9 you have control over and which you don't.

10 A. I mean, I think it's been pointed out
11 on numerous occasions in front of this Commission,
12 you know, I think the overall purchasing of coal, I
13 mean, is set by international global markets. So I
14 don't think we have a great deal of control there.
15 That's probably the vast majority of the cost.

16 And then purchased power is the other
17 side, selling into the MISO market. We certainly
18 are a price taker. We don't set the price there.
19 I mean, that's probably the two biggest components,
20 I would guess 90 percent of the costs are something
21 we don't have any control over.

22 Q. But you do manage those costs?

23 A. Absolutely, we do.

24 Q. And you have some discretion over the
25 control of -- of what flows through that?

1 A. We do. I mean, we're 75 percent, you
2 know, coal-fired generation, and so there's only so
3 many coal companies out there. We've been very
4 focused on trying to burn the lowest sulphur coal,
5 and so that even takes further restrictions away,
6 because that allows us to push off some of these
7 environmental controls that we've been able to push
8 into the future. And so I think that control is
9 extremely limited.

10 **Q. Would you agree with me that your**
11 **customers have zero control over those costs?**

12 A. In terms of what this --

13 **Q. Costs flow that through the fuel**
14 **adjustment clause.**

15 A. That is correct.

16 MR. COFFMAN: That's all I have.

17 Thank you.

18 JUDGE WOODRUFF: Thank you. Public

19 Counsel?

20 CROSS-EXAMINATION BY MS. BAKER:

21 **Q. Good afternoon.**

22 A. Good afternoon.

23 **Q. I just have a couple of questions**
24 **about your direct testimony.**

25 A. Okay.

1 Q. Page 11, please.

2 A. Okay.

3 Q. These are just clarifying questions
4 about the graph that you have attached there.

5 A. Okay.

6 Q. These rates that you represent in the
7 graph, these are calendar year 2013; is that
8 correct?

9 A. Yes. Yes, they are.

10 Q. And all of these are comparisons of
11 the various companies' winter rates; is that
12 correct?

13 A. That's correct, yes.

14 Q. Do you know what Ameren Missouri's
15 summer rate is?

16 A. No, I don't. It is a bit higher. I
17 don't know what it is, but I assume that all of
18 these would compare favorably as well.

19 Q. But you stated the summer rate is
20 higher?

21 A. We do have seasonal rates, yes.

22 Q. And the summer rate is higher?

23 A. Yes. Yes, it is.

24 Q. And there are -- do the prices within
25 this graph contain other amounts like the MEEIA

1 **surcharge?**

2 A. Yeah. I think this would be the
3 total bill.

4 **Q. This is a total bill?**

5 A. Uh-huh.

6 **Q. For Ameren in the winter months,
7 calendar year 2013?**

8 A. That's correct.

9 MS. BAKER: I have no further
10 questions.

11 JUDGE WOODRUFF: Thank you. MIEC?

12 MR. DOWNEY: No questions.

13 JUDGE WOODRUFF: Staff?

14 MR. THOMPSON: No questions. Thank
15 you, Judge.

16 JUDGE WOODRUFF: We'll come up for
17 questions from the Bench. Mr. Chairman?

18 QUESTIONS BY CHAIRMAN KENNEY:

19 **Q. Mr. Moehn, good afternoon. Thanks
20 for being here. I just have a couple of questions,
21 first about regulatory lag as referenced the your
22 testimony, and we hear about it in virtually every
23 rate case. Would you agree with me that some
24 measure of regulatory lag is appropriate under your
25 regulatory construct?**

1 A. Yeah. And I think when -- yes. When
2 you set rates, we're never going to hit exactly
3 that return on equity. There are going to be
4 sometimes we're over it; sometimes we're below it.

5 And I think we've -- if you go back
6 in time, there are lots of charts here this morning
7 kind of focusing on '12 forward. If you go back
8 '07 through '11, we've had periods of significant
9 under-recovery.

10 **Q. And then we talked about a variety of**
11 **risk-reducing measures such as the FAC and trackers**
12 **for vegetation management and for storm tracking.**
13 **Would you agree with me that those types of**
14 **measures reduce the fiscal or financial risk to the**
15 **company as a general proposition?**

16 A. Yes. To what amount, I'm not sure.
17 But I think the important thing to keep in mind is
18 as you look at it on a relative basis. So again,
19 as we compare ourselves again to other utilities, I
20 think it's been pointed out several times, we are
21 competing with other utilities for capital, so
22 looking on a relative basis, making sure that those
23 other utilities either have or don't have those
24 same mechanisms.

25 **Q. And then would you agree with me as a**

1 **general proposition that your ROE is supposed to be**
2 **reflective of the company's financial risk?**

3 A. Yes, I would.

4 **Q. So would you agree with me that the**
5 **more tracking or single-issue ratemaking mechanisms**
6 **that we allow, that that should be reflected in the**
7 **company's ROE? How we quantify that, I'm not**
8 **asking about, but you'd agree with me that that**
9 **should be reflected in your ROE?**

10 A. Yes, I think it is probably. It is
11 today. And I think as you look at it compared
12 again on a relative basis to those other utilities,
13 that's the comparison you have to do. But, you
14 know, it would probably be a good question too for
15 Mr. Hevert.

16 CHAIRMAN KENNEY: I don't have any
17 other questions. Thanks.

18 JUDGE WOODRUFF: Commissioner Stoll?

19 QUESTIONS BY COMMISSIONER STOLL:

20 **Q. Good afternoon.**

21 A. Good afternoon.

22 **Q. I think one question. In the local**
23 **public hearings on several occasions people brought**
24 **up the fact that the fuel prices are going down and**
25 **how does -- how do your coal contracts work? Would**

1 **you be the person to tell us about that? I mean,**
2 **is it a six-month contract or --**

3 A. Yeah. I can give you a very high
4 overview and then we can certainly -- there's going
5 to be witnesses. Jeff Jones could probably talk
6 about that.

7 At a high level, we did a couple of
8 years ago entered into a longer-term contract,
9 about a four-year contract to hedge a good part of
10 our fuel. It was to really try to comply with some
11 environmental rules that we're seeing come down,
12 the cross-state pollution control rule. And in
13 order to try to avoid doing what we thought were
14 some additional environmental controls, we went out
15 and got a very, very low sulfur coal contract and
16 entered into that. I think it runs through 2017.

17 Now, we obviously are -- we have a
18 lot of volumetric differences that occur within a
19 given year based on load and other changes,
20 shipment problems. And so I think within a given
21 year we probably buy or sell 15 percent that sort
22 of floats with the market.

23 **Q. Does most of your coal come from the**
24 **Powder River Basin?**

25 A. Yeah, almost exclusively, with -- we

1 blend a little bit of -- our Sioux Energy Center
2 burns a little bit of Illinois coal, but we're
3 probably 90-plus percent Powder River Basin coal.

4 COMMISSIONER STOLL: Thank you.

5 THE WITNESS: Thank you.

6 JUDGE WOODRUFF: Commissioner Hall?

7 QUESTIONS BY COMMISSIONER HALL:

8 **Q. Good afternoon.**

9 A. Good afternoon.

10 **Q. In response to a question from**
11 **Mr. Coffman, you agreed that Ameren had been a**
12 **beneficiary of regulatory lag the preceding two**
13 **years; is that correct?**

14 A. Yes. I mean, I think through
15 managing these costs that we've been managing,
16 which I think is really the purpose of this
17 contract, gives us the ability to either earn below
18 or above and, yes, we've been, I think, doing a
19 good job of managing those costs and benefits of
20 regulatory lag.

21 **Q. So Ameren benefited because it**
22 **managed its costs in a beneficial way in a non-test**
23 **year?**

24 A. In between rate -- yeah, correct, in
25 between rate cases.

1 Q. Okay. And that was the -- the O&M
2 costs you're talking about?

3 A. That's correct.

4 Q. Were there any other costs or any
5 other action that Ameren took between rate cases
6 that allowed it to benefit from regulatory lag?

7 A. No. It's primarily regulatory lag.
8 I mean, depends on your view of how the federal
9 government, the extension of bonus depreciation we
10 talked about. I mean, that's always a benefit to
11 customers as well. I mean, that's lowering rate
12 base through accelerated depreciation. So
13 customers are seeing a benefit through that, but
14 not the company.

15 Q. All right. In your direct testimony
16 on page 15, between line 7 and 13, you discuss the
17 cost to serve load that is just relocating within a
18 service territory.

19 A. Right.

20 Q. And what -- if you've got a company
21 that picks up and moves from one part of your
22 service territory to another, what costs are you
23 talking about there, what increased costs?

24 A. So the example that I'm giving here
25 is, so there's a lot of westward expansion, so

1 people continue to move out further and further
2 west. You know, you look at some of the outlet
3 malls that are being built out in Chesterfield. I
4 mean, so you're having to build all that
5 distribution to serve all of that load as well.

6 **Q. So it's the distribution system that**
7 **is the identifiable incremental cost?**

8 A. Correct.

9 **Q. Okay. I'm sorry. And then I**
10 **interrupted you.**

11 A. No. I was just going to say, you
12 know, from a -- from a customer standpoint, I mean,
13 so you have customers that are leaving one part --
14 the state of Missouri, as has been noted here, is
15 not enjoying a great deal of population growth. So
16 we don't have a lot of customer growth. So we have
17 customers moving around. So you're still having to
18 serve the existing load that we had, in addition to
19 that you're building out the system to serve the
20 new load, too.

21 **Q. So does it make sense from your**
22 **perspective to have customers that are relocating**
23 **to an area where there's additional infrastructure**
24 **needed to pay an additional cost for service?**

25 A. No.

1 **Q. Why?**

2 A. Well, because I think, you know, as a
3 regulated utility, we have a franchised area that
4 we provide service to and so we need to provide
5 whoever wants service, provide them that service
6 and those costs get shared.

7 **Q. But if you agree with cost of service**
8 **ratemaking and if you agree that customers should**
9 **pay the cost to serve them, why should we not**
10 **decide that individuals or companies that are**
11 **moving into areas where there's an additional**
12 **distribution network required pay an additional**
13 **cost for service?**

14 A. I mean, certainly they will to the
15 extent that, you know, if it's one customer moving
16 in a particular area, I mean, we'll build out the
17 network, you know, the stuff that is serving other
18 people. So to the extent that there are
19 reliability enhancements for all customers, those
20 costs would be socialized.

21 To the extent that there's cost
22 associated with that individual customer getting
23 them hooked up, that individual customer would, in
24 fact, pay that.

25 **Q. How so?**

1 A. Well, I mean, we work out agreements
2 with them and -- for example, so there's all this
3 talk about the new football stadium downtown, and
4 so there's been some discussions there about what
5 it's going to cost to relocate some of the
6 transmission and other things down there.

7 So we will -- if, in fact, this is
8 going to happen, we'll come up with an agreement of
9 what that's going to cost and that football
10 partnership or whomever is going to be the owner of
11 that will pay that cost. That cost won't be
12 socialized with all the other customers.

13 **Q. Are you familiar with Ameren's**
14 **economic development rider?**

15 A. I am.

16 **Q. Do you think that it is possible to**
17 **apply the rider in a situation that we're talking**
18 **about, to a situation where you've got a part of**
19 **your service territory where you have population**
20 **loss and try to provide an incentive to not move to**
21 **new parts of your service territory that increase**
22 **your costs and the cost of all consumers?**

23 A. I think my understanding of how the
24 economic development rider works -- and I think
25 there is some other folks on the stand that can

1 answer some more detailed questions. I mean, it's
2 really designed, you know, you have a company that
3 has a competing offer in hand to move out of the
4 state, and so you want to retain -- you want to
5 retain that company in the state, and then they're
6 also receiving some sort of economic benefits from
7 the state as well, either some sort of tax credits.

8 And so there is a provision that
9 allows for up to a 15 percent discount for a period
10 of five years.

11 **Q. Yeah. I understand how it currently**
12 **works, or some people would say doesn't work. But**
13 **what I'm wondering is, if it would make sense**
14 **philosophically to broaden it so as to be applied**
15 **to the situation we're talking about here or is**
16 **there some -- do you have some philosophical**
17 **aversion to that concept?**

18 A. Well, again, I think cost of service
19 principles, the ratemaking process would say, you
20 know, cost causation, those customers should pay
21 the cost. And so I think in general the class of
22 customer that's incurring the cost should pay the
23 cost. It doesn't mean that, you know, you can't
24 use these economic development riders from time to
25 time, but I believe that's really the foundation of

1 the regulatory compact.

2 Q. But we get to decide how to define
3 the classes, and so if we define the class
4 residential or commercial or industrial customers
5 in a geographic area where there is population
6 loss, they would be -- without some type of
7 economic development rider, they would be bearing
8 the cost caused by others who are leaving that area
9 and relocating?

10 A. Right. I mean, yeah, we -- right. I
11 guess we have businesses that shut down all the
12 time and move out of state or move into the state,
13 but, I mean, again, I think the basic principle is
14 that the classes should be paying whatever their
15 cost of service is. I don't know if I'm answering
16 your question or not.

17 Q. I'm not sure either. Let me go to a
18 different issue, the wholesale arrangement proposal
19 with Noranda.

20 A. Right.

21 Q. Have you been involved in
22 negotiations, you directly with Noranda on this
23 issue?

24 A. Yes, I have.

25 Q. Are you optimistic?

1 A. The conversations have been
2 constructive. I would say that, you know, we're at
3 a bit of an impasse with respect to this wholesale
4 contract. With respect to that piece, I'm less
5 optimistic today. Been trying very, very hard to
6 try to find a solution to this. I know that this
7 has been going on for a long time, but it -- I
8 don't know if we can solve it from a regulatory
9 perspective or not. But I'm certainly giving it
10 every effort that I possibly can.

11 COMMISSIONER HALL: Thank you. I
12 have no further questions.

13 JUDGE WOODRUFF: All right. Then
14 recross based on questions from the Bench. Anyone
15 wish to recross?

16 Any redirect?

17 MS. TATRO: Yes, thank you.

18 REDIRECT EXAMINATION BY MS. TATRO:

19 **Q. So, Mr. Moehn, both Consumers Council**
20 **and Commissioner Hall discussed regulatory lag with**
21 **you and whether or not Ameren Missouri has**
22 **benefited from the regulatory lag in the past. Do**
23 **you recall that conversation?**

24 A. I do, yes.

25 **Q. Do you know if -- and I believe**

1 Mr. Coffman's questions referred back to the,
2 quote, overearnings that had been shown on the
3 charts in opening statements.

4 A. Correct.

5 Q. Do you know what the earnings will
6 show at the end of '12 -- '14? Sorry. I'm a
7 couple of years behind here -- 2014 in terms of
8 what the company has earned?

9 A. I do. We're going to file it
10 tomorrow. I think we need to probably go in camera
11 if I'm going to discuss it.

12 MS. TATRO: Can we go in-camera?

13 JUDGE WOODRUFF: We can. If there's
14 anyone in the room that needs to leave, please do
15 so at this point.

16 (REPORTER'S NOTE: At this point, an
17 in-camera session was held, which is contained in
18 Volume 15, pages 215 through 217 of the
19 transcript.)

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1 JUDGE WOODRUFF: And we're back in
2 regular session.

3 BY MS. TATRO:

4 Q. Mr. Coffman also discussed with you
5 the idea of I'll call it a reverse AAO, an AAO for
6 cost decreases. Do you recall that discussion?

7 A. I do.

8 Q. Do you know if the O&M cost decreases
9 that you talk about in your testimony, how that
10 would fit into the idea of it being extreme?

11 A. You know, no, I don't know if
12 somebody would consider these cost savings over
13 those two and a half years would be extreme or not.

14 Q. Then at the very end of Mr. Hall's
15 questions to you, there was a short discussion
16 about the negotiations you've been involved in with
17 Noranda. Do you recall those discussions?

18 A. I do.

19 Q. Could you describe a bit for the
20 Commission where you've gone and what type of
21 discussions you've had, what effort you've made in
22 order to try to resolve this issue?

23 A. As I indicated to Commissioner Hall,
24 we really have been trying to be very constructive
25 on this issue. I mean, based on the last order, I

1 think it was last fall, denying the expedited
2 treatment to do anything on the Noranda issue, I
3 made a personal call to Mr. Smith, the CO of
4 Noranda. I went to see Mr. Smith in Seattle. He's
5 come here numerous times. And we've been really
6 trying to find a way to solve this issue, but just
7 it's -- it's difficult and we just haven't been
8 able to come to agreement unfortunately. It's
9 certainly not for lack of trying.

10 MS. TATRO: Thank you, sir. I have
11 no further questions.

12 JUDGE WOODRUFF: You can step down.

13 (Witness excused.)

14 MR. THOMPSON: Next witness on the
15 list is Michael Stahlman.

16 (Witness sworn.)

17 JUDGE WOODRUFF: You may inquire.

18 MR. THOMPSON: Thank you, Judge.

19 MICHAEL STAHLMAN testified as follows:

20 DIRECT EXAMINATION BY MR. THOMPSON:

21 Q. State your name, please.

22 A. Michael Stahlman.

23 Q. And how are you employed?

24 A. With Missouri Public Service
25 Commission as an economist.

1 Q. Now, are you the same Michael
2 Stahlman that contributed to the Staff Revenue
3 Requirement Cost of Service Report?

4 A. I am.

5 Q. In particular Section 4, economic
6 considerations?

7 A. Yes.

8 Q. And you also prepared or caused to be
9 prepared rebuttal and surrebuttal testimony; isn't
10 that right?

11 A. Yes.

12 Q. But your rebuttal and surrebuttal
13 testimony do not have anything having to do with
14 economic considerations; isn't that correct?

15 A. Correct.

16 Q. With respect to your Section 4, your
17 contribution to the Cost of Service Report, do you
18 have any corrections or additions?

19 A. No.

20 Q. So that testimony is correct as you
21 filed it?

22 A. Yes.

23 Q. And as far as you know, the contents
24 are true and correct according to your best
25 knowledge and belief?

1 A. Yes.

2 MR. THOMPSON: Now, it's our practice
3 to put off moving for the admission of the Cost of
4 Service Report until the last witness has
5 testified, Judge, so I will stop at that point, and
6 I will tender Mr. Stahlman for cross-examination.

7 JUDGE WOODRUFF: For
8 cross-examination, beginning with MIEC?

9 MR. DOWNEY: No questions.

10 JUDGE WOODRUFF: Public Counsel?

11 MS. BAKER: No questions. Thank you.

12 JUDGE WOODRUFF: Consumers Council?

13 MR. COFFMAN: No questions.

14 JUDGE WOODRUFF: And Ameren -- or
15 excuse me -- United for Missouri?

16 MR. LINTON: No questions.

17 JUDGE WOODRUFF: Ameren?

18 MS. TATRO: No questions. Thank you,
19 sir.

20 JUDGE WOODRUFF: All right. We'll
21 come up for questions from the Bench.

22 Mr. Chairman?

23 COMMISSIONER KENNEY: No questions.

24 Thanks for being here.

25 JUDGE WOODRUFF: Commissioner Stoll?

1 COMMISSIONER STOLL: No questions.

2 Thank you.

3 JUDGE WOODRUFF: Commissioner Hall?

4 COMMISSIONER HALL: No questions.

5 JUDGE WOODRUFF: So no need for

6 recross or redirect. You can step down.

7 THE WITNESS: Thank you very much.

8 (Witness excused.)

9 JUDGE WOODRUFF: And Mr. Marke is
10 next then for Public Counsel.

11 (Witness sworn.)

12 JUDGE WOODRUFF: You may inquire.

13 GEOFF MARKE testified as follows:

14 DIRECT EXAMINATION BY MS. BAKER:

15 **Q. Could you state and spell your name**
16 **for the court reporter.**

17 A. Geoff Marke, G-e-o-f-f, M-a-r-k-e.

18 **Q. And by whom are you employed?**

19 A. Missouri Office of Public Counsel.

20 **Q. What is your business address?**

21 A. Governor's Office Building,
22 Suite 650, 200 Madison Street, P.O. Box 2230.

23 **Q. And what position do you hold with**
24 **the Office of Public Counsel?**

25 A. I'm a designated principal assistant,

1 regulatory economist.

2 Q. And are you the same Dr. Geoff Marke
3 who filed direct, rebuttal and surrebuttal in this
4 case?

5 A. Yes.

6 Q. Do you have any changes or
7 corrections to your testimony?

8 A. I do. I have two changes.

9 Q. Which piece of testimony are we
10 starting with?

11 A. Starting with my rebuttal testimony,
12 on page 1, lines 15 through 16, it states,
13 quotation marks, double recovery of solar rebate
14 charges from Missouri Industrial Energy Consumers,
15 parentheses, MIEC witness Greg Meyer. We can
16 delete that.

17 Q. The entire bullet point?

18 A. Yes. And in my surrebuttal
19 testimony, page 13, line 1, states, question, what
20 does this data impact your rebuttal testimony? It
21 should be changed to, question, how does this data
22 impact your rebuttal testimony? That's it.

23 Q. All right. And with these
24 corrections and changes in mind, are your -- is
25 your testimony true and accurate to your best

1 **knowledge and belief?**

2 A. Yes.

3 **Q. And again, with these corrections or**
4 **changes in mind, if you were asked the questions**
5 **today, would your answers be the same?**

6 A. They would.

7 MS. BAKER: And I will wait to offer
8 Dr. Marke's testimony until the last time that he
9 is on the stand, and I will tender him for
10 cross-examination.

11 JUDGE WOODRUFF: Thank you. For
12 cross-examination, beginning with Consumers
13 Council?

14 MR. COFFMAN: No questions.

15 JUDGE WOODRUFF: Staff?

16 MR. THOMPSON: No questions. Thank
17 you.

18 JUDGE WOODRUFF: MIEC?

19 MR. DOWNEY: No questions.

20 JUDGE WOODRUFF: United for Missouri?

21 MR. LINTON: No questions.

22 JUDGE WOODRUFF: Ameren Missouri?

23 MS. TATRO: Good afternoon,
24 Mr. Marke.

25 THE WITNESS: Good afternoon.

1 MS. TATRO: I don't have any
2 questions for you either.

3 JUDGE WOODRUFF: Mr. Chairman?

4 QUESTIONS BY CHAIRMAN KENNEY:

5 Q. Dr. Marke, thanks for being here.

6 Just as a matter of -- general economic conditions
7 of ratepayers is obviously of concern, and it's one
8 of the areas I think in opening statement that
9 Mr. Allison talked about with the ROE and whatever
10 amount we had in that regard.

11 Do you have an opinion about whether
12 discontinuing Ameren's FAC would have a negative
13 impact on its ability to attract the capital --
14 cost to attract capital at a higher cost, thus
15 harming ratepayers in that regard?

16 A. That's a great question, Chairman. I
17 think there are a number of factors to consider. I
18 would point out that so far, from what I've heard
19 this morning, we can throw a blanket level term
20 when we say FAC, and I would just caution that what
21 an FAC means in Missouri is very different than
22 what an FAC means in other jurisdictions. Look at
23 it almost as a spectrum. So what's allowable,
24 what's approved and the conditions under which it's
25 executed vary significantly.

1 That being said, I think -- as I sit
2 here today, I think I would be in agreement with
3 Mr. Woodsmall's arguments in terms of the FAC in
4 that Ameren Missouri's Standard & Poor's index
5 showed that adding on that FAC didn't change it.
6 One could assume that relieving that might not
7 change that as well. I think that's a safe
8 assumption. It's definitely something to consider.

9 COMMISSIONER KENNEY: No other
10 questions. Thank you.

11 JUDGE WOODRUFF: Commissioner Stoll?

12 COMMISSIONER STOLL: No questions.
13 Thank you for your testimony.

14 JUDGE WOODRUFF: Commissioner Hall?

15 COMMISSIONER HALL: No questions.
16 Thank you.

17 THE WITNESS: Thank you.

18 JUDGE WOODRUFF: Any recross based on
19 that question from the Chairman?

20 MR. THOMPSON: No, thank you, Judge.

21 JUDGE WOODRUFF: Okay. Ms. Tatro?

22 RECROSS-EXAMINATION BY MS. TATRO:

23 **Q. Hi. On those questions about the FAC**
24 **from the Chair, he asked you -- your response to**
25 **your opinion if it's discontinued was that it**

1 varies from different jurisdictions. Do you recall
2 that?

3 A. I do.

4 Q. Do you know how many jurisdictions
5 have sharing of the costs that run through their
6 fuel adjustment clause?

7 A. I heard an earlier quote today from
8 Mr. Lowery that said 98 percent of utilities that
9 he cited have some form of an FAC. In terms of the
10 specifics behind that, I can't speak to that at the
11 moment.

12 Q. You haven't done any research on
13 that?

14 A. Not that I can provide to you at this
15 moment.

16 Q. There was a second question -- well,
17 along the same question, you said at the time that
18 the FAC was added, there was no change in the
19 credit rating of the company. Do you recall that
20 conversation?

21 A. I do.

22 Q. Did you confirm that yourself, or are
23 you relying on Mr. Woodsmall's statement?

24 A. I am relying on Mr. Woodsmall's
25 statement for that matter.

1 Q. So you've not gone back through the
2 credit report to see if there was an actual change
3 or not?

4 A. I have not.

5 Q. Do you know if there is any change in
6 credit quality as far as what the Commission is
7 rated as in these reports, whether they're
8 supported or not supported?

9 A. I sorry. Could you please repeat
10 that?

11 Q. Do you know if there was change in
12 the credit reports, the aspects of credit quality
13 supportiveness or of the Commission?

14 A. If there was change in the aspect of
15 the credit quality?

16 Q. Do you know what I mean when I say
17 credit quality?

18 A. I do.

19 Q. And do you agree that many of those
20 reports will discuss whether commissions are
21 supportive or not supportive of various -- for
22 example, the FAC?

23 A. Sure.

24 Q. And do you agree that some of those
25 reports talk about kind of the overall regulatory

1 **climate?**

2 A. Yes.

3 **Q. And do you know if those changed once**
4 **the Commission granted Ameren Missouri an FAC?**

5 A. I think there -- when we say whether
6 or not the Commission is a supportive regulatory
7 environment, there are a number of factors to
8 consider, an FAC being one of them.

9 **Q. Okay. Do you know specifically after**
10 **the FAC was granted whether the credit rating**
11 **agencies expressed that that represented to them a**
12 **change in the climate, regulatory climate?**

13 A. Specific to the FAC?

14 **Q. Yes.**

15 A. I do not.

16 **Q. Okay. You didn't look?**

17 A. I did not.

18 MS. TATRO: Okay. Thank you.

19 JUDGE WOODRUFF: Any redirect?

20 MS. BAKER: Just a couple of

21 questions.

22 REDIRECT EXAMINATION BY MS. BAKER:

23 **Q. You are not Public Counsel's witness**
24 **on the FAC issues, correct?**

25 A. That is correct.

1 **Q. And you are not Public Counsel's**
2 **witness on ROE and financial analysis, correct?**

3 A. That is correct.

4 MS. BAKER: No further questions.

5 JUDGE WOODRUFF: Okay. Thank you,
6 Mr. Marke -- or Dr. Marke. You are excused.

7 THE WITNESS: Thank you.

8 JUDGE WOODRUFF: And that will
9 conclude the proceedings for today, then. We will
10 resume tomorrow at 10 a.m.

11 (WHEREUPON, the hearing was recessed
12 at 1:48 p.m.)

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